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WHEN: Tuesday, December 11, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 613

Plant Materials Centers

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Final rule.

SUMMARY: Minor editorial changes are being made to clarify and update the existing regulation on plant materials centers. Although the changes are minor, the entire part is published in this final rule for the convenience of the reader.

DATES: Effective December 6, 2007.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed at Diane E. Gelburd, Director, Ecological Sciences Division. Ms. Gelburd may be contacted at USDA, Natural Resources Conservation Service, Post Office Box 2890, Room 6160—South, Washington, DC 20013; telephone: (202) 720–2587; e-mail: *Diane.Gelburd@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Since Part 613 became effective (49 FR 12188, March 29, 1989), several changes have occurred—requiring the need to update it. These changes include an expanded mission for the Plant Materials Program, such as working with threatened and endangered and pollinator species; selecting plants that will mitigate odor, PM–10, and PM–2.5; testing plants for biofuels and other energy-related activities; and evaluating plants and technologies to combat invasive plant species. Three additional plant materials centers have been added. These plant materials centers are located in Booneville, Arkansas; Alderson, West Virginia; and Fallon, Nevada. These changes are minor and do not significantly affect Part 613.

This rule sets forth general statements of Agency policy and internal Agency organization and management. Therefore, pursuant to 5 U.S.C. 553, it is found that notice and public comment is not required. Further, in light of the minor changes, good cause is found for making this rule effective on publication in the **Federal Register**. Since this rule relates to internal Agency management, it is exempt from Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 613

Plants (agriculture), Soil conservation.

■ Accordingly, 7 CFR part 613 is revised to read as follows:

PART 613—PLANT MATERIALS CENTERS

Sec.

Authority: 16 U.S.C. 590a–f 590f, 5908; 7 U.S.C. 1010–1011.

§ 613.1 Purpose.

This part provides NRCS policy on the operation of plant materials centers. The centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials and plant materials technology for programs of soil, water, and related resource conservation and development.

§ 613.2 Policy and objectives.

(a) It is NRCS policy to assemble, comparatively evaluate, release, and distribute for commercial increase new or improved plant materials and plant materials technology needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. Also, it is NRCS policy to conduct plant materials work in cooperation with other agencies of the Department of Agriculture, such as the Agricultural Research Service, and with other Federal and State research agencies including State agricultural experiment stations. The emphasis of the NRCS plant materials work is to find suitable plants to address conservation needs. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The NRCS program of testing and releasing new seed-propagated plant materials follows the guidelines in ''Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops,'' which was adopted in June 1972 by land grant colleges and interested Federal agencies. NRCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular States and particular species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants, and techniques for their successful establishment and maintenance to solve conservation problems and needs related to:

(1) Controlling soil erosion on all lands;

(2) Conserving water;

(3) Protecting upstream watersheds;

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas;

(5) Stabilizing disposal areas for liquid and solid wastes;

(6) Improving plant diversity and lengthening the grazing season on dryland pastures and rangelands;

(7) Managing brush on mountain slopes with fire-retarding plant cover to reduce the possibility of fires that threaten life and property or result in serious sediment sources;

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling snow drifting, and preventing crop damage from wind erosion;

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action;

(10) Improving wildlife food and cover, including threatened and endangered and pollinator species;

(11) Selecting special purpose plants to meet specific needs for environment protection and enhancement;

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals;

(13) Selecting plants that mitigate odor, PM–10, and PM–2.5;

(14) Testing plants for biofuels and other energy-related activities; and

(15) Evaluating plants and techniques to combat invasive plant species and for reestablishment of desirable species after eradication.

§ 613.3 NRCS responsibilities in plant materials.

NRCS operates or enters into agreements with State universities or other State organizations to operate plant materials centers. Also, NRCS cooperates, both formally and informally, with other Federal, State, county, and nonprofit agencies or organizations on the selection of plants and evaluation of plant technology to increase the capabilities of plant materials centers. NRCS employs specialists for testing and selecting plant materials for conservation uses and the development of plant materials technology. NRCS responsibilities are to:

(a) Identify the resource conservation needs and cultural management methods for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at plant materials centers and on sites where soil, climate, or other conditions differ significantly from those at the centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular State and plant species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available by grant to or by exchange with conservation districts, experiment stations, other Federal and State research agencies, and State seed certifying organizations that will use the material to establish seed fields, seed orchards, or plantings for vegetative increase.

(f) Encourage and assist conservation districts, commercial seed producers, and commercial and State nurseries to produce needed plant materials for conservation uses.

(g) Encourage the use of improved plant materials and plant materials technology in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

§ 613.5 Plant materials centers.

(a) *The National Plant Materials Center.* The National Plant Materials Center at Beltsville, Maryland focuses on national initiatives and provides coordination for plant materials work across all 50 States. In addition, the center provides plants and plant technology to address resource concerns in the mid-Atlantic region.

(b) *Other Plant Materials Centers.* There are 26 other plant materials centers; each serves several major land resource areas. Twenty-four of these centers are operated by NRCS and two by cooperating agencies as follows:

(1) Operated by NRCS: Tucson, Arizona; Booneville, Arkansas; Lockeford, California; Brooksville, Florida; Americus, Georgia; Molokai, Hawaii; Aberdeen, Idaho; Manhattan, Kansas; Golden Meadows, Louisiana; East Lansing, Michigan; Coffeeville, Mississippi; Elsberry, Missouri; Bridger, Montana; Fallon, Nevada; Cape May Courthouse, New Jersey; Los Lunas, New Mexico; Big Flats, New York; Bismarck, North Dakota; Corvallis, Oregon; Kingsville, Texas; Knox City, Texas; Nacogdoches, Texas; Pullman, Washington; and Alderson, West Virginia.

(2) Operated by cooperating agencies with financial and technical assistance from NRCS: Meeker, Colorado—White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS.

(3) Operated by cooperating agencies with technical assistance from NRCS: Palmer, Alaska—State of Alaska, Department of Natural Resources.

Signed in Washington, DC, on November 20, 2007.

Arlen L. Lancaster,

Chief.

[FR Doc. E7–23525 Filed 12–5–07; 8:45 am]

BILLING CODE 3410–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2007–0575; FRL–8340–4]

Bacillus Thuringiensis Vip3Aa19 Protein in Cotton; Extension of a Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a plant-incorporated protectant (PIP). Syngenta Seeds, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption be extended. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a PIP on cotton. The temporary tolerance exemption expires on May 1, 2009.

DATES: This regulation is effective December 6, 2007. Objections and requests for hearings must be received on or before February 4, 2008 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0575. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0575 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 4, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0575, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 8, 2007 (72 FR 44521) (FRL–8139–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7216) by Syngenta Seeds, Inc., 3054 Cornwallis Rd., P.O. Box 12257, Research Triangle Park, NC 27709. The petition requested that 40 CFR 174.501 be amended such that the temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* Vip3Aa19 insect control protein (vector pCOT1) when applied or used as a PIP on cotton expires on May 1, 2009. This notice included a summary of the petition prepared by the petitioner, Syngenta Seeds, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major

identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating a lack of mammalian toxicity at high levels of exposure to the pure (microbially expressed) Vip3Aa19 protein. These data demonstrate the safety of Vip3Aa19 at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this PIP was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, the need for Tier II and III toxicity testing and residue data to verify the observed effects and clarify the source of these effects is triggered only by significant acute effects in studies such as the mouse oral toxicity study.

In previously submitted Vip3A studies and applications, the designation VIP3A or Vip3A was used to describe the Vip PIP protein and/or test material. In the final rule, it is necessary to distinguish the various Vip3A designations based on the Crickmore *Bacillus thuringiensis* Vip3A nomenclature (see *http://www.lifesci.sussex.ac.uk/Home/Neil_Crickmore/Bt*). The original Vip3A toxin as expressed in COT102 is now known as Vip3Aa19 toxin according to the Crickmore nomenclature designation. A temporary exemption from the requirement of tolerance already has been established for the *Bacillus thuringiensis* Vip3Aa19 protein in cotton (See the **Federal Register** issue of July 25, 2007 (72 FR 40752) (FRL–8134–3); 40 CFR 174.501 that expires May 1, 2008.

An acute oral toxicity study was submitted for the Vip3Aa19 protein. Male and female mice (16 of each) were dosed with 3,675 milligrams/kilograms bodyweight (mg/kg bwt) of Vip3Aa19 protein. All mice survived the study, gained weight, had no test material-related clinical signs, and had no test material-related findings at necropsy. This acute oral toxicity data supports the prediction that the Vip3Aa19 protein would be non-toxic to humans.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. 1992). Therefore, since no effects were shown to be caused by the PIP, even at relatively high-dose levels, the Vip3Aa19 protein is not considered toxic. Amino acid sequence comparisons showed no similarity between the Vip3Aa19 protein and known toxic proteins available in public protein data bases. According to the Codex Alimintarius Commission (Codex) guidelines, the assessment of potential toxicity also includes stability to heat (Joint Food and Agriculture Organization of the United Nations/World Health Organization (FAO/WHO) Food Standard Programme, Codex Alimentarius Commission, 2003[1]). A heat lability study demonstrated that Vip3Aa19 is inactivated against fall armyworm when heated to 55 °C for 30 minutes.

Since Vip3Aa19 is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for determining the allergenic potential of novel proteins. Therefore, EPA uses a weight-of-the-evidence approach where the following factors are considered: source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF), and glycosylation. This approach was described by the Codex guidelines for the conduct of food safety assessment of food derived from recombinant-DNA plants including the assessment of possible allergenicity in 2003 (Joint FAO/WHO Food Standard Programme, Codex Alimentarius Commission, 2003[1]).

Data have been submitted that demonstrate that the Vip3A from recombinant maize (LPPACHA–0199) and *E. coli* (VIP3A–0100) proteins are rapidly degraded by gastric fluid *in vitro*. (VIP3A–0100 refers to a microbially expressed Vip3A that has been shown to be the equivalent of the plant-expressed Vip3A protein.) In a solution of SGF (containing pepsin) and either 80 microLiters (µL) of LPPACHA–0199 or 320 µL of VIP3A–0100 test protein, both were shown to be susceptible to pepsin degradation. These data support the conclusion that Vip3A proteins expressed in transgenic plants will be readily digested as a conventional dietary protein under typical mammalian gastric conditions. Further data demonstrate that Vip3Aa19 is not glycoslylated and a comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Vip3Aa19, even at the level of eight contiguous amino acid residues. These data demonstrated that mean Vip3Aa19 concentration in cotton seed ranged from (*circa*). 2.51 to 3.23 micrograms (µg) Vip3A/g dry weight. Vip3Aa19 was not detected in cotton fiber or nectar. Analysis of the refined oil and de-fatted meal by Enzyme-Linked Immunosorbent Assay (ELISA) detected Vip3Aa19 protein in COT102 meal, but not in oil. Therefore, based on the data provided for the specific Vip3Aa19 protein, one can conclude that the Vip3Aa19 protein is present in low levels in cotton seed and not detected in cotton fiber.

Therefore, the potential for the Vip3Aa19 protein to be a food allergen is minimal. As noted in Unit III., toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by this PIP, even at relatively high-dose levels, the Vip3Aa19 protein is not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the PIP chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the PIP is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. The amino acid homology assessment revealed no similarities to known aeroallergens, indicating that Vip3A has a low potential to be an inhalation allergen. It has been demonstrated that there is no evidence of occupationally related respiratory symptoms, based on a health survey on migrant workers after exposure to *Bacillus thuringiensis* pesticides (Berstein et al. 1999), which provides further evidence of the negligible respiratory risks of *Bacillus thuringiensis* PIPs. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the Vip3Aa19 protein are all agricultural for control of insects. Oral exposure, at very low levels may

[1] Alinorm 03/34: Joint FAO/WHO Food Standard Programme, Codex Alimentarius Commission, Twenty-Fifth Session, Rome, Italy 30 June–5 July, 2003. Appendix III, Guideline for the conduct of food safety assessment of foods derived from recombinant-DNA plants and Appendix IV, Annex on the assessment of possible allergenicity. Rome, Codex Alimentarius Commission, 2003, p.p 47–60.

occur from ingestion of processed corn products and, theoretically, drinking water.

However, oral toxicity testing done at a dose in excess of 3 grams/kilogram (gm/kg) showed no adverse effects. Furthermore, the expected dietary exposure from cotton is several orders of magnitude lower than the amounts of Vip3Aa19 protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would present no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the Vip3Aa19 proteins.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations include the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity, the Agency concludes that there are no cumulative effects arising from Vip3Aa19 protein residues in cotton.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Vip3Aa19 protein include the characterization of the expressed Vip3Aa19 protein in cotton, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Vip3A protein test material derived from microbial cultures (designated VIP3A–0100) was biochemically and functionally similar to the Vip3Aa19 protein expressed in cotton. Microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the Vip3Aa19 protein would be non-toxic to humans. As mentioned in Unit III., when proteins are toxic, they are known to act via acute mechanisms and at very low-dose levels (Sjoblad, Roy D., et al. 1992). Since no effects were shown to be caused by Vip3Aa19 protein, even at relatively high dose levels (3,675 mg Vip3Aa19/kg bwt), the Vip3Aa19 protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this PIP was derived. (See 40 CFR 158.740(b)(2)(i)). Moreover, Vip3Aa19 showed no sequence similarity to any known toxin.

Protein residue chemistry data for Vip3Aa19 were not required for a human health effects assessment of the subject PIP ingredients because of the lack of mammalian toxicity. Expression data demonstrated that mean Vip3Aa19 concentrations in cotton seed ranged from approximately 2.51 to 3.23 µg Vip3Aa19/g dry weight. Vip3Aa19 was not detected in cotton fiber or nectar. Analysis of the refined oil and de-fatted meal by ELISA detected Vip3Aa19 protein in COT102 meal, but not in oil. Therefore, Vip3Aa19 is present in low levels in cotton seed and not detectable in cotton fiber.

Since Vip3Aa19 is a protein, its potential allergenicity is also considered as part of the toxicity assessment. Information considered as part of the allergenicity assessment included data demonstrating that the Vip3Aa19 protein came from a *Bacillus thuringiensis* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that the Vip3Aa19 protein will not be an allergen.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children), nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the Vip3Aa19 protein, as well as the minimal potential to be a food allergen, demonstrate the safety of Vip3Aa19 at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the PIP active ingredients are the nucleic acids Deoxyribonucleic acid, Ribonucleic acid (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material DNA, RNA necessary for the production of Vip3Aa19 protein already are exempted from the requirement of a tolerance under a blanket exemption for all nucleic acids (40 CFR 174.507).

B. Infants and Children Risk Conclusions

Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base, unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Vip3Aa19 protein and the genetic material necessary for its production in cotton. Because there are no threshold effects of concern, the Agency has determined that the additional tenfold margin of safety is not necessary to protect infants and children. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the Vip3Aa19 protein and the genetic material necessary for its production in cotton, when it is applied or used in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as previously discussed, no toxicity to mammals has been observed, nor has there been any indication of allergenicity potential for this PIP.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the PIP at this time.

B. Analytical Method(s)

A method for extraction and ELISA analysis of the Vip3Aa19 protein in cotton has been submitted and is under review by the Agency. For the temporary tolerance exemption, the ELISA method described with the expression data is sufficient.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the PIP *Bacillus thuringiensis* Vip3Aa19 protein and the genetic material necessary for its production in cotton.

VIII. Statutory and Executive Order Reviews

This final rule extends the temporary exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629 February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.501 is revised to read as follows:

§ 174.501 Bacillus thuringiensis Vip3Aa19 protein in cotton; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vip3Aa19 protein in cotton are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities of cotton; vegetative-insecticidal protein in cotton, undelinted seed, cotton, oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton, gin byproducts. This temporary exemption from the requirement of tolerance will permit the use of the food commodities in this section when treated in accordance with the provisions of the experimental use permit 67979–EUP–7, which is being extended in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked May 1, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the temporary tolerance exemption is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

[FR Doc. E7–23660 Filed 12–5–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8003]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by

publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Maine: Mapleton, Town of, Aroostook County.	230025	May 13, 1975, Emerg; September 18, 1985, Reg; December 18, 2007, Susp.	Dec. 18, 2007 ...	Dec. 18, 2007.
Region III				
Virginia: Henrico County, Unincorporated Areas.	510077	December 30, 1971, Emerg; February 4, 1981, Reg; December 18, 2007, Susp.	.....do	Do.
Region IV				
North Carolina: Alexander County, Unincorporated Areas.	370398	July 23, 1990, Emerg; February 1, 1991, Reg; December 18, 2007, Susp.	.....do	Do.
Region V				
Illinois: Dwight, Village of, Livingston County	170423	September 9, 1974, Emerg; November 1, 1990, Reg; December 18, 2007, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Fairbury, City of, Livingston County	170424	May 27, 1975, Emerg; April 16, 1990, Reg; December 18, 2007, Susp.	.....do	Do.
Livingston County, Unincorporated Areas	170929	June 6, 1996, Emerg;—, Reg; December 18, 2007, Susp.	.....do	Do.
Pontiac, City of, Livingston County	170426	—, Emerg;—, Reg; December 18, 2007, Susp.	.....do	Do.
Streator, City of, Livingston County	170408	December 1, 1972, Emerg; September 18, 1986, Reg; December 18, 2007, Susp.	.....do	Do.
Ohio: Geneva, City of, Ashtabula County	390013	August 16, 1974, Emerg; February 1, 1980, Reg; December 18, 2007, Susp.	.....do	Do.
Geneva on-the-Lake, Village of, Ashtabula County.	422507	March 28, 1975, Emerg; December 4, 1979, Reg; December 18, 2007, Susp.	.....do	Do.
Jefferson, Village of, Ashtabula County	390014	July 23, 1976, Emerg; August 1, 1979, Reg; December 18, 2007, Susp.	.....do	Do.
North Kingsville, Village of, Ashtabula County.	390889	May 27, 1988, Emerg; August 4, 1988, Reg; December 18, 2007, Susp.	.....do	Do.
Roaming Shores, Village of, Ashtabula County.	390885	June 12, 1987, Emerg; September 16, 1988, Reg; December 18, 2007, Susp.	.....do	Do.
Rock Creek, Village of, Ashtabula County	390665	August 7, 1975, Emerg; July 7, 1978, Reg; December 18, 2007, Susp.	.....do	Do.
Region VIII				
South Dakota: Edgemont, City of, Falls River County.	460026	March 6, 1980, Emerg; December 16, 1980, Reg; December 18, 2007, Susp.	.....do	Do.
Fall River County, Unincorporated Areas	460238	October 24, 2003, Emerg;—, Reg; December 18, 2007, Susp.	.....do	Do.
Hot Springs, City of, Falls River County	460027	May 7, 1973, Emerg; June 30, 1976, Reg; December 18, 2007, Susp.	.....do	Do.
Region X				
Oregon: Boardman, City of, Morrow County	410174	October 22, 1975, Emerg; May 25, 1978, Reg; December 18, 2007, Susp.	.....do	Do.
Heppner, City of, Morrow County	410175	June 21, 1974, Emerg; April 1, 1981, Reg; December 18, 2007, Susp.	.....do	Do.
Ione, City of, Morrow County	410176	November 17, 1975, Emerg; April 1, 1981, Reg; December 18, 2007, Susp.	.....do	Do.
Irrigon, City of, Morrow County	410177	November 25, 1975, Emerg; August 26, 1977, Reg; December 18, 2007, Susp.	.....do	Do.
Lexington, City of, Morrow County	410178	January 15, 1975, Emerg; April 1, 1981, Reg; December 18, 2007, Susp.	.....do	Do.
Morrow County, Unincorporated Areas	410173	June 3, 1974, Emerg; April 1, 1981, Reg; December 18, 2007, Susp.	.....do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 26, 2007.

David I. Maurstad,

Assistant Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23708 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8001]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new

construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region V				
Indiana:				
Cumberland, Town of, Hancock County	180510	March 10, 1993, Emerg; March 10, 1993, Reg; December 4, 2007, Susp.	Dec. 4, 2007	Dec. 4, 2007.
Greenfield, City of, Hancock County	180084	July 25, 1975, Emerg; November 4, 1981, Reg; December 4, 2007, Susp.	.....do	Do.
Hancock County, Unincorporated Areas	180419	April 21, 1975, Emerg; October 15, 1982, Reg; December 4, 2007, Susp.	.....do	Do.
McCordsville, Town of, Hancock County	180468	March 18, 2005, Emerg; March 18, 2005, Reg; December 4, 2007, Susp.	.....do	Do.
Spring Lake, Town of, Hancock County	180346	September 3, 1985, Emerg; September 3, 1985, Reg; December 4, 2007, Susp.	.....do	Do.
Wisconsin:				
Belgium, Village of, Ozaukee County ...	550311	June 30, 1999, Emerg; June 30, 1999, Reg; December 4, 2007, Susp.	.....do	Do.
Fredonia, Village of, Ozaukee County ..	550313	February 7, 1975, Emerg; January 2, 1981, Reg; December 4, 2007, Susp.	.....do	Do.
Grafton, Village of, Ozaukee County	550314	April 30, 1975, Emerg; May 15, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Ozaukee County, Unincorporated Areas	550310	May 14, 1971, Emerg; May 16, 1977, Reg; December 4, 2007, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Port Washington, City of, Ozaukee County.	550316	June 30, 1975, Emerg; October 15, 1981, Reg; December 4, 2007, Susp.	.....do	Do.
Saukville, Village of, Ozaukee County ..	550317	April 18, 1974, Emerg; December 16, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Thiensville, Village of, Ozaukee County	550318	March 26, 1974, Emerg; August 1, 1978, Reg; December 4, 2007, Susp.	.....do	Do.
Region VII				
Iowa:				
Dallas County, Unincorporated Areas ...	190860	December 14, 1992, Emerg; May 1, 1994, Reg; December 4, 2007, Susp.	.....do	Do.
De Soto, City of, Dallas County	190359	September 1, 1979, Emerg; September 27, 1985, Reg; December 4, 2007, Susp.	.....do	Do.
Jasper County, Unincorporated Areas ..	190880	February 23, 1983, Emerg; January 1, 1987, Reg; December 4, 2007, Susp.	.....do	Do.
Kellogg, City of, Jasper County	190164	June 3, 1977, Emerg; June 1, 1987, Reg; December 4, 2007, Susp.	.....do	Do.
Reasnor, City of, Jasper County	190167	May 24, 1993, Emerg; September 1, 1996, Reg; December 4, 2007, Susp.	.....do	Do.
Region VIII				
Colorado:				
Avon, Town of, Eagle County	080308	May 22, 1985, Emerg; August 19, 1987, Reg; December 4, 2007, Susp.	.....do	Do.
Basalt, Town of, Eagle County	080052	May 1, 1975, Emerg; March 18, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Eagle, Town of, Eagle County	080238	August 20, 1976, Emerg; March 18, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Eagle County, Unincorporated Areas	080051	May 7, 1976, Emerg; November 19, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Gypsum, Town of, Eagle County	080295	July 7, 1980, Emerg; September 16, 1981, Reg; December 4, 2007, Susp.	.....do	Do.
Minturn, Town of, Eagle County	080053	September 26, 1975, Emerg; September 17, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Red Cliff, Town of, Eagle County	080260	April 18, 1985, Emerg; April 18, 1985, Reg; December 4, 2007, Susp.	.....do	Do.
Vail, Town of, Eagle County	080054	August 13, 1976, Emerg; May 2, 1983, Reg; December 4, 2007, Susp.	.....do	Do.
Utah: Eureka, City of, Juab County	490079	May 22, 1985, Emerg; August 19, 1987, Reg; December 4, 2007, Susp.	.....do	Do.
Nephi, City of, Juab County	490229	May 29, 1975, Emerg; August 5, 1986, Reg; December 4, 2007, Susp.	.....do	Do.
Region IX				
Arizona:				
Casa Grande, City of, Pinal County	040080	May 5, 1972, Emerg; August 1, 1977, Reg; December 4, 2007, Susp.	.....do	Do.
Coolidge, City of, Pinal County	040082	February 5, 1975, Emerg; June 10, 1980, Reg; December 4, 2007, Susp.	.....do	Do.
Queen Creek, Town of, Pinal County ...	040132	July 22, 1992, Emerg; July 22, 1992, Reg; December 4, 2007, Susp.	.....do	Do.
Queen Creek, Town of, Pinal County ...	040132	July 22, 1992, Emerg; July 22, 1992, Reg; December 4, 2007, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 26, 2007.

David I. Maurstad,

Assistant Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23716 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Washington County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–7472			
Brush Creek	At intersection with Interstate 540	+1304	City of Springdale.
	Approximately 150 feet downstream of Gutensohn	+1334	
Tributary	Approximately 125 feet upstream of Force-Main Crossing	+1317	City of Springdale.
	At intersection with Gutensohn Road	+1326	
Mud Creek	Approximately 50 feet upstream of Gregg Street	+1183	City of Fayetteville, City of Johnson.
	At intersection with College Avenue	+1203	
West Fork White River	Approximately 0.5 miles upstream from confluence with White River.	+1173	City of Fayetteville.
	Approximately 1500 feet downstream from the intersection with Harvey Owl Road.	+1173	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Fayetteville
Maps are available for inspection at 113 West Mountain, Fayetteville, AR 72701.
City of Johnson
Maps are available for inspection at 2904 Main Dr., Johnson, AR 72741.
City of Springdale
Maps are available for inspection at 201 North Spring Street, Springdale, AR 72764.

Hopkins County, Kentucky and Incorporated Areas Docket No.: FEMA–B–7710			
Clear Creek	Approximately 1450 feet downstream of KY 2171	+399	City of Earlington Hopkins County, (Unincorporated Areas).
	Approximately 140 feet upstream of West Thompson Avenue.	+418	
Tributary	Confluence with Clear Creek	+405	City of Earlington.
	Approximately 50 feet downstream of Loch Mary Reservoir	+422	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Elk Creek	Confluence with Pond River	+387	Hopkins County, (Unincorporated Areas).
	Approximately 8600 feet downstream of Brown Road	+387	
	Approximately 750 feet downstream of Island Ford Road	+406	
	Approximately 320 feet downstream of Fowler Road	+412	
Tributary 10.5	Approximately 100 feet upstream of confluence with Elk Creek Tributary 5.1.	+403	City of Madisonville Hopkins County, (Unincorporated Areas).
		+425	
	Approximately 450 feet upstream of Island Park Drive		
Tributary 4	Confluence with Elk Creek	+412	City of Madisonville Hopkins County, (Unincorporated Areas).
	Approximately 120 feet downstream of Stagecoach Road	+439	
Tributary 5.1	Approximately 1660 feet downstream of McGrew Lane	+400	City of Madisonville Hopkins County, (Unincorporated Areas).
	Approximately 170 feet upstream of Edward T. Breathitt Parkway.	+426	
Otter Creek	Confluence with Pond River	+387	Hopkins County, (Unincorporated Areas).
	Approximately 5300 feet upstream of Vandetta Road	+387	
Pleasant Run	Approximately 580 feet downstream of North Hopkinsville Street.	+406	City of Nortonville.
		+411	
	Approximately 1550 feet upstream of Seaboard System Railroad.		
Pond River	Confluence with Otter Creek	+387	Hopkins County, (Unincorporated Areas).
	Approximately 14,570 feet upstream of Anton Road	+387	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Earlington
Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
City of Madisonville
Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
City of Nortonville
Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.

Hopkins County (Unincorporated Areas)

Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.

Greene County, New York (All Jurisdictions)
Docket No.: FEMA–D–7686

Batavia Kill	At the confluence with Schoharie Creek	+1,180	Town of Ashland, Town of Prattsville, Town of Windham.
	Approximately 0.44 mile upstream of Big Hollow Road	+2,312	
East Kill	Approximately 60 feet downstream of State Route 23A	+1,402	Town of Jewett.
	At the Colgate Outlet Access Road	+2,063	
Gooseberry Creek	At the confluence with Schoharie Creek	+1,729	Town of Hunter, Village of Tannersville.
	Approximately 50 feet upstream of the confluence of Sawmill Creek.	+1,861	
Mitchell Hollow Creek	Approximately 260 feet upstream of the confluence with Batavia Kill.	+1,518	Town of Windham.
		+1,566	
	Approximately 0.54 mile upstream of State Route 23		
Sawmill Creek	At the confluence with Gooseberry Creek	+1,860	Town of Hunter, Village of Tannersville.
	Approximately 320 feet upstream of Spring Street	+1,973	
Schoharie Creek	At the county boundary	+1,143	Town of Hunter, Town of Jewett, Town of Lexington, Town of Prattsville, Village of Hunter.
	Approximately 270 feet upstream of Elka Road	+1,806	
Stony Clove Creek	At the county boundary	+1,169	Town of Hunter.
	Approximately 500 feet upstream of State Route 214	+1,794	
West Kill	At the confluence with Scoharie Creek	+1,318	Town of Lexington.
	Approximately 660 feet upstream of Ad Van Road	+1,942	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Ashland
Maps are available for inspection at the Ashland Town Hall, 12094 Route 23, Ashland, New York.
Town of Hunter
Maps are available for inspection at the Hunter Town Hall, 5748 Route 23A, Tannersville, New York.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Town of Jewett
Maps are available for inspection at the Jewett Municipal Building, 3547 County Route 23C, Jewett, New York.
Town of Lexington
Maps are available for inspection at the Lexington Town Hall, 3542 Route 42, Lexington, New York.
Town of Prattsville
Maps are available for inspection at the Prattsville Town Hall, Supervisor's Office, 14517 Main Street, Prattsville, New York.
Town of Windham
Maps are available for inspection at the Windham Town Hall, 371 State Route 296, Hensonville, New York.
Village of Hunter
Maps are available for inspection at the Hunter Village Hall, 6349 Main Street, Hunter, New York.
Village of Tannersville
Maps are available for inspection at the Tannersville Village Hall, 1 Park Lane, Tannersville, New York.

Orange County, North Carolina and Incorporated Areas
Docket No.: FEMA–D–7812

Dry Branch	At the confluence with New Hope Creek Tributary Approximately 870 feet upstream of Silver Creek Trail	+286 +397	Town of Chapel Hill.

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Town of Chapel Hill
Maps available for inspection Chapel Hill Town Hall, Stormwater Management Program Office, 209 North Columbia Street, Chapel Hill, North Carolina.

Montour County, Pennsylvania, and Incorporated Areas
Docket No.: FEMA–B–7473

Mahoning Creek	Approximately 7345 feet downstream of Northumberland Street. Approximately 1310 feet upstream of Northumberland Street.	+460 +461	Borough of Danville, Township of Mahoning.
Roaring Creek	Approximately 1310 feet downstream of River Drive Approximately 980 feet upstream of River Drive	+470 +470	Township of Mayberry.
Sechler Run	Approximately 215 feet downstream of Rooney Avenue Bridge. Approximately at 1210 feet upstream of Railroad Street.	+461 +461	Borough of Danville.
Susquehanna River	Approximately at 9500 feet downstream of Factory Street, at the Montour County Line. Approximately 6.4 miles upstream of Factory Street, at the Montour County Line.	+459 +471	Township of Mayberry, Borough of Danville, Township of Cooper, Township of Mahoning.

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Borough of Danville
Maps are available for inspection at 239 Mill Street, Danville, PA 17821.
Township of Cooper
Maps are available for inspection at 19 Steltz Road, Danville, PA.
Township of Mahoning
Maps are available for inspection at 1101 Bloom Road, Danville, PA 17821.
Township of Mayberry
Maps are available for inspection at 53 Sunset Road, Catawissa, PA 17820.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 28, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23689 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 630

[Docket No: FTA–2007–27319]

RIN 2132–AA94

National Transit Database: Amendment to Reporting Requirements and Non-Substantive Technical Changes

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This notice announces the final rule requiring recipients of grants under 49 U.S.C. 5311, Formula Grants for Other Than Urbanized Areas (Nonurbanized Area Formula Grants,) to report annual data to the National Transit Database (NTD) as a condition for receiving these grants. In addition, this final rule makes non-substantive changes, technical corrections, and conforming amendments to the ''National Transit Database'' regulation.

DATES: *Effective Date:* January 7, 2008.

FOR FURTHER INFORMATION CONTACT: For program issues: John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues: Richard Wong, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–0675 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is FTA's primary national database for statistics on the transit industry. Section 3033 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59 (August 10, 2005)] amended the NTD provisions under 49 U.S.C. 5335 to require that each recipient receiving Formula Grants for Other Than Urbanized Areas (Nonurbanized Area Formula Grants), or any person that will receive benefits directly from these funds, must be subject to the reporting and uniform systems of the NTD. Section 5335(b) continues to require NTD reporting for recipients of and beneficiaries of assistance from Urbanized Area Formula Grants.

In addition, section 3013(b) of SAFETEA–LU amended 49 U.S.C. 5311(b)(4) to require each recipient receiving Nonurbanized Area Formula Grants to submit an annual report containing information on capital investment, operations, and service provided with grant funds from this program. The recipient must include the following information in the report: Total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. The mandatory reporting criteria will assist FTA in understanding the effectiveness of Nonurbanized Area Formula Grants in improving rural public transportation. These data are similar to those already collected by FTA for recipients of Urbanized Area Formula Grants, but are streamlined for rural recipients.

This final rule revises 49 CFR Part 630, the Uniform System of Accounts and Reporting System, to conform with 49 U.S.C. 5335 and 5311, as amended by sections 3033 and 3013(b) of SAFETEA–LU.

II. Comments and FTA Response to Comments

On March 26, 2007, FTA issued a notice of proposed rulemaking (NPRM) that provided interested parties with the opportunity to comment on substantive amendments to FTA's NTD Regulation that would implement the annual reporting requirements for recipients and beneficiaries of Nonurbanized Area Formula Grants (72 FR 14061). In this NPRM, FTA proposed changes that would: (1) Require recipients of Nonurbanized Area Formula Grants to report data to the NTD; and, (2) require the annual reporting of rural transit data as a condition for receiving Nonurbanized Area Formula Grants. The proposed rule also contained technical corrections and conforming amendments, such as changes to statutory references. FTA invited comments on the proposed substantive amendments that would implement the annual reporting requirements for Nonurbanized Area Formula Grant recipients and beneficiaries. In accordance with 5 U.S.C. 553(b)(3)(A), FTA did not invite comments on the technical corrections and conforming amendments because those changes are ''interpretative'' in nature, and FTA was not required to accept or consider comments on them.

FTA received ten comments on the proposed substantive amendments that would implement the annual reporting requirements for Nonurbanized Area Formula Grant recipients and beneficiaries. FTA hereby responds to these comments in the following order: (a) General Coordination and Reporting Concerns; (b) Failure to Report Data; (c) Late and Incomplete Reports; (d) Questionable Data Items; (e) Notice of FTA action; (f) Waiver of Reporting Requirements; (g) Proposed Appendix A; (h) Comments on the proposed 2007 Rural NTD Module Reporting Manual; and, (i) Additional Technical Revisions.

(a) General Reporting Concerns

Four comments expressed concern about the burden of the proposed reporting requirements. One commenter strongly encouraged FTA to follow its stated purpose to provide streamlined reporting requirements for the rural program. Another commenter expressed concern that rural systems will experience significant difficulties in complying with reporting, which will impact the reliability and usefulness of the data. One commenter noted that FTA's historical position has been to not be involved with subrecipients and that data collection on individual subrecipients is a major departure from this practice.

FTA response: FTA is seeking the data to comply with 49 U.S.C. 5335 and 49 U.S.C. 5311(b)(4), and the proposed reporting requirements are largely specified by statute. FTA notes that it is only requiring the States to complete and submit a one-page form for each Section 5311 grant subrecipient, and is only requiring Tribes that are direct recipients of Section 5311 grants to complete the same form. Comments on the specific nature of the reporting requirements, however, are outside the scope of this rulemaking. FTA considered these comments as part of the process of finalizing the 2007 Rural NTD Reporting Manual.

In response to the commenter regarding data collection from subrecipients, FTA notes that FTA has the statutory authority to require recipients to gather and report subrecipients' NTD data to FTA pursuant to 49 U.S.C. 5335. Section 5335(a) states that FTA may request and receive appropriate information for the NTD from ''any source,'' which includes requesting information from a Nonurbanized Area Formula Grant subrecipient. Moreover, Section 5335(b) states that FTA ''may award a grant under section 5307 or 5311 only if the

applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.'' A subrecipient of Section 5311 is a direct beneficiary of the grant and, as such, is subject to providing information for the NTD to the extent FTA requires. FTA reminds the commenter that subrecipients must meet a number of grant requirements before the disbursement of grant money, and that the NTD reporting is one of these requirements.

FTA recognizes that rural systems may not have sophisticated technical resources. FTA has limited the information collection to data that any transit provider should collect for its own internal management purposes. FTA will train and work with reporters to ensure data quality, while recognizing that, in some cases, good-faith estimates may have to suffice.

FTA received three comments expressing concern about the ambiguity of the reporting requirements for those transit agencies receiving grants under both Section 5307 and Section 5311, and the burden that this would have on small transit agencies. One commenter particularly expressed concern about allocating operating data and safety data across separate reports for urbanized areas and for rural areas, and across funding sources. Another commenter asked FTA to specifically detail how it would prevent double-counting across urbanized area and rural area NTD submissions. One commenter suggested that FTA should relieve States from the responsibility of reporting on behalf of subrecipients that are already reporting directly to the NTD as an urbanized area reporter.

FTA Response: FTA accepts the suggestion of the commenter to relieve States from the responsibility of reporting on behalf of subrecipients that are already reporting directly to the NTD as an urbanized area reporter. Since the urbanized area reporting requirements are more extensive than the rural reporting requirements, all of the data required by the rural NTD reporting requirements can be captured through the urbanized area NTD reporting requirements. As such, FTA has amended § 630.4 to specify that States need not provide reports for those transit agencies that are already providing reports to the NTD as urbanized area transit agencies. This amendment to the rule will preclude the need for allocation of data in the rural reporting, and will eliminate the possibility of double-counting.

FTA understands, however, that as proposed, the rule may have been unclear as to which entity should submit data to the NTD. As such, FTA replaced the term ''reporting agency,'' in the proposed rule, with the term ''reporting entity,'' which FTA defined as a transit agency, a State Department of Transportation that is a recipient of grants under 49 U.S.C. 5311, or a Federally-recognized Indian Tribe that is a direct recipient of grants under 49 U.S.C. 5311. FTA also added the definition of ''State Department of Transportation'' for clarification purposes.

One comment reminded FTA to be cognizant of the efforts of many rural transportation agencies in following the Executive Order on Human Service Agency Transportation Coordination, and to not provide additional barriers in the final rule that undermine those agencies in making the best use of limited transportation resources.

FTA response: FTA agrees with the second comment, and has taken coordinated funding sources and human service trips into consideration in the 2007 Rural NTD Module Reporting Manual. This rule does not conflict with the Executive Order on Human Service Agency Transportation Coordination.

One comment expressed the concern that removing the rural area ridership and revenue data from the previously-combined urbanized and rural services reporting will negatively affect Section 5307 funding for grant recipients that currently receive both Section 5307 and Section 5311 funding.

FTA response: FTA notes that it uses the data submitted to the Annual NTD Module for the apportionment of Section 5307 funds (Urbanized Area Formula Grants), and services provided in nonurbanized areas have never been permitted to be included in the apportionment of Section 5307 funds. In addition, FTA notes that under the current Annual NTD Module Reporting Manual (for Urbanized Areas) transit agencies providing service in urbanized areas subject to the apportionment of funds based on service data must separate their data for services provided in urbanized areas from services provided in non-urbanized areas.

Three commenters asked FTA to use a reporting system similar to the Management Information System (MIS) used for Drug and Alcohol testing so that individual subrecipients and their contracted providers can enter their own data, subject to a review by the State, rather than requiring the State to collect and enter the data into the NTD. One commenter asked FTA to implement an automated reporting system that did not require manual entry.

FTA response: FTA understands some transit agencies and State DOTs may prefer to have transit agencies enter their data directly. However, FTA believes State DOT reporting is in the public interest, and reduces the reporting burden on the smallest rural transit agencies. Therefore, FTA will continue to require the States to submit subrecipient data, as developed in consultation with State DOTs and Section 5311 grant subrecipients. While FTA is neither able to consider using the Volpe Center's MIS submissions system nor some similar automated reporting system for direct reporting by subrecipients at this time, FTA may explore implementing improvements in the reporting software as financial resources permit.

Two commenters identified a discrepancy between the definitions of ''public transportation'' in the proposed rulemaking and the 2007 Rural NTD Module Reporting Manual with regard to whether public transportation includes or excludes intercity bus. In particular, these commenters note that the proposed rule excludes intercity bus from public transportation, while the proposed 2007 Rural NTD Module Reporting Manual includes intercity bus as public transportation. These commenters ask for clarity and consistency between the two definitions. One commenter asked FTA to further clarify whether the State or the intercity bus company is responsible for reporting intercity bus data.

FTA Response: FTA understands that, as proposed, the definition of ''public transportation'' agency presents an apparent conflict with the definition of public transportation in the proposed 2007 Rural NTD Module Reporting Manual. FTA revised the proposed definition of ''public transportation agency'' to clarify that a transit agency means an entity providing public transportation as defined in 49 U.S.C. 5302, and updated the references to public transportation agency accordingly.

Under 49 U.S.C. 5311, intercity bus projects are identified as a beneficiary of a certain portion of Section 5311 grants, and 49 U.S.C. 5335 requires that all recipients or beneficiaries of Section 5311 grants be subject to NTD reporting requirements. FTA does not believe that Congress intended the definition of ''public transportation'' in 49 U.S.C. 5302 to provide States with an exception to NTD reporting for intercity bus transportation subrecipients. Thus, States should include information on all beneficiaries of the State's Section 5311 grants, including intercity bus

transportation, in the State's NTD report.

(b) Failure to report data.

Four commenters expressed concern that § 630.5 was unduly harsh in tying Section 5311 funding to compliance with a data collection program. These commenters argued that providing transit services was more important than providing data, and expressed concern that withholding funds from applicants who do not comply with NTD reporting requirements does not seem reasonable and may not be in the best interest of the applicant or the State.

FTA Response: Pursuant to 49 U.S.C. 5335(b), FTA may award a grant under section 5307 or 5311 only if the applicant, and any person that will receive benefits directly from the grant, are subject to NTD reporting. As a result, FTA does not have discretion to separate Section 5311 funding from compliance with NTD reporting.

Four commenters expressed concern that § 630.5 did not provide FTA with enough discretion in evaluating the compliance of recipients and direct beneficiaries of Section 5311 grants with NTD reporting, and that this section mandated automatic ineligibility for Section 5311 funding, even for non-major violations. These commenters recommended that FTA amend the first sentence of § 630.5 to substitute the word ''may'' for the word ''will'' when discussing ineligibility for future grants based on a failure to report data to NTD.

FTA Response: FTA understands the basis of the commenters' desire to amend the first sentence of § 630.5. However, the statute states that FTA may award a grant under Section 5307 or 5311 ''*only if* the applicant and any person that will receive benefits directly from the grant are subject to the reporting and uniform systems.'' FTA does not have the discretion to award a grant under section 5307 or 5311 to a recipient that fails to report the required data to the NTD. Therefore, FTA did not adopt the commenters' suggestion to use the discretionary word ''may'' in this section.

One commenter suggested that § 630.5 be amended to require that the determination of ineligibility be possible only for data reporting efforts that, ''when viewed as a whole,'' are not in ''substantial conformance'' with this part. This commenter also argued that reporting entities should receive ''a written notice from FTA explaining the reasons why the data submitted, viewed as a whole, are not in substantial conformance with this part'' and that a reporting entity should have ''a reasonable opportunity to file amended or additional data in response to such FTA notice.''

FTA Response: FTA declines to adopt the commenters' suggestion to amend § 630.5 to require that the determination of ineligibility be made only for data reporting efforts that, when ''viewed as a whole'' are not in ''substantial conformance'' with 49 CFR part 630. FTA agrees that reporters should be given an opportunity to remedy deficiencies in their submissions and has provided this opportunity in a notice provision set forth in § 630.9 and the waiver provision set forth in § 630.10.

Five commenters asked if FTA intends to hold the entire State liable if only one subrecipient does not submit NTD data to the State.

FTA Response: FTA does not intend to hold the entire State liable if a subrecipient does not submit NTD data to the State. FTA reminds commenters that pursuant to Circular 9040.1F, ''Nonurbanized Area Formula Program Guidance and Application Instructions,'' States must ensure that subrecipients of Section 5311 grants are in compliance with a number of FTA requirements. Ensuring that a subrecipient supports the State's ability to comply with NTD reporting would be one of these requirements. Pursuant to Circular 9040.1F, a State would be required to withhold the disbursement of funds to a subrecipient that did not support the State's ability to comply with NTD reporting. By withholding disbursement of funds to the subrecipient, that subrecipient would no longer be a direct beneficiary of the State's Section 5311 grant.

One commenter suggested that FTA amend the proposed part 630 to add a section that makes it clear that an agency declared ineligible for funding will be able to file for reinstatement when it: (1) Files data that sufficiently corrects deficiencies in its prior data submission; or (2) makes a filing consistent with the Alcohol Program Incentive Grant Program established by 23 U.S.C. 163(e). Another commenter asked FTA to clarify how long the subrecipient would be ineligible for funding once FTA determined ineligibility.

FTA Response: FTA has amended the proposed rule in § 630.5 to clarify that failure to report data in accordance with this part will result in the ''noncompliant reporting entity'' being ineligible to receive any Section 5307 or 5311 Grants until such time as a report is filed in accordance with this part. This change also clarifies that a transit agency that fails to report data as a recipient of a Section 5307 grant would also be ineligible to be a beneficiary, as a subrecipient, of a Section 5311 grant. Pursuant to 49 U.S.C. 5335(b), FTA may make grants under Section 5311 only if the applicant and any person that will receive benefits directly from the grant are subject to the reporting and uniform systems. As a result, the approach outlined in 23 U.S.C. 163(e), which describes penalties for States that have not enacted or enforced safety incentives to prevent operation of motor vehicles by intoxicated persons, cannot be applied to the NTD program.

Two commenters were concerned that the proposed § 630.5 empowers FTA staff to determine ineligibility for funding if they find that the data submitted does not meet ''regulatory requirements.'' These commenters suggested that § 630.5 be rewritten to require the Administrator to declare a reporting entity ineligible for Federal transit funds for noncompliance with NTD reporting.

FTA Response: FTA does not adopt the suggested revision to § 630.5 to require the Administrator to make a determination of ineligibility of funding. The FTA Administrator's concurrence, or that of his or her designee, will be sought prior to an ineligibility determination being issued.

(c) Late and Incomplete Reports

One commenter asked if FTA intends to require that NTD reports be accurate and complete. Another commenter argued that ''if there is a data gap, it should not create a risk of ineligibility if, viewed as a whole, the agency data submission is in substantial conformance with the requirements.'' This commenter requested an amendment to permit agencies to provide good faith estimates.

FTA Response: FTA reminds the commenter requesting clarity concerning the accurateness and completeness of NTD data that Congress created the NTD to meet the needs of the Nation for information on which to base public transportation service planning. As such, data submitted must be accurate and complete. FTA does not accept the suggestion to explicitly allow for accepting good-faith estimates. Section 630.8 already provides for agencies to comply by ''exhausting all possibilities for obtaining this information.'' Additionally, as set forth in § 630.10, FTA may grant waivers to reporting entities on a case-by-case basis when the reporting entity cannot furnish the data without unreasonable expense and inconvenience. Further, before taking final action under §§ 630.5 and 630.8, FTA will transmit a written

request to the reporting entity for it to provide the necessary information to FTA.

Two commenters suggested that FTA implement a process that provides new Section 5311 reporters with additional time for compliance. One commenter suggested the rules regarding timely submission proposed in § 630.6(a) should provide for (1) an extension of 30 days to be granted automatically, not as a matter of FTA discretion, and (2) longer extensions as a matter of FTA discretion for good cause shown.

FTA Response: FTA disagrees that it should provide Section 5311 reporters with additional time to comply with the reporting requirements. As set forth in 49 U.S.C. 5335, Congress established the NTD to meet the needs of all levels of government, and the needs of the public, for public transportation service planning. Public transportation service planners have consistently advised FTA that public transportation service planning requires current and complete data. Thus, late and incomplete reports have negative and severe impacts on the NTD's ability to fulfill its statutory purpose. FTA will grant reasonable waivers and extensions as provided in the rule, but FTA does not agree to institute an automatic waiver, which would constitute a *de facto* extension of all reporting deadlines by 30 days. As proposed, the rule gives reporting entities the opportunity to remedy deficiencies in their submissions by providing reporting entities with the opportunity to request a 30-day extension for submission, and the opportunity to request a waiver as set forth in § 630.10. However, FTA revised the proposed rule to clarify that a reporting entity may submit its report on an extended deadline, as opposed to on the due date prescribed in the reference documents.

(d) Questionable Data Items

FTA received two comments on the proposed § 630.8 ''Questionable Data Items.'' These commenters expressed concern that the proposed § 630.8 provided the possibility of an apportionment adjustment for the Section 5311 program based on deficiencies in data. These commenters highlighted that the relevant factors for the Section 5311 grant program apportionments are (1) the non-urbanized area population, and (2) land area and suggested that FTA amend the proposed § 630.6 to delete reference to modification of 5311 apportionments. One commenter asked FTA to clarify how it intends to use the NTD information for rural programs to gauge how the increased apportionments affect 5311 recipients when there is no previous data to analyze.

FTA Response: FTA agrees that the proposed § 630.8 inadvertently provided the possibility of an apportionment adjustment for the Section 5311 program based on deficiencies in data. FTA notes that the relevant factors for the Section 5311 grant program apportionments are (1) the population in nonurbanized areas, and (2) the land area in nonurbanized areas. Accordingly, FTA revised the proposed rule to clarify that FTA does not use data from rural transit agencies in the apportionment of Section 5311 funds. FTA notes that there are some previous studies of rural transit service to rely upon for retrospective comparisons. Additionally, FTA notes that this data collection will provide a consistent time series for rural transit data forwarding the future.

(e) Notice of FTA Action

FTA received two comments on the proposed § 630.9 ''Notice of FTA action.'' One commenter noted that FTA should not make adjustments to any data submitted without speaking or writing directly to the agency submitting the data. Another commenter expressed concern that the proposed language, ''request the necessary information,'' is insufficient notice to a reporting entity. This commenter recommended that FTA amend the proposed § 630.9 to specify that FTA's notice must ''explain'' to the agency what information the agency should provide to FTA.

FTA Response: FTA reminds the first commenter that, as proposed in § 630.9, FTA transmits a written request to the reporting entity to provide the necessary information to FTA before it takes final agency action. In addition, when FTA identifies questionable data items in NTD submissions, FTA contacts the reporter in writing, and provides the reporter with an opportunity to either explain or revise the questionable data item. FTA revised the proposed § 630.7 to clarify this procedure. FTA believes that the revised language in § 630.7 and FTA's current practice, adequately addresses this commenters concern. FTA finds the suggested amendment unnecessary.

(f) Waiver of Reporting Requirements

FTA received two comments on the proposed § 630.10 ''Waiver of Reporting Requirements.'' These commenters suggested that FTA personnel should have considerable flexibility to grant waivers, extensions or leniency to transit agencies attempting to comply, particularly in the initial years of implementation. One commenter suggested that FTA amend § 630.10 to add the following sentence: ''Waivers of one or more of the requirements of this part may be granted for good cause shown. Each waiver will be for a specified period of time.''

FTA response: FTA agrees that it should have flexibility to grant waivers. However, FTA declines to adopt the amendment as proposed by the commenter as FTA believes the proposed waiver provision already provides FTA with considerable flexibility to grant waivers to transit agencies attempting to comply.

(g) Proposed Appendix A to Part 630

FTA received two comments on the proposed Appendix A to Part 630. One commenter was unsure whether the auditor statement requirement set forth in Appendix A, Subsection F(2)(b) applied to all providers of transit using 5311 funds or only some. This commenter suggested that if FTA intends to impose such a requirement on only some Section 5311 providers, FTA should clarify this intent. This commenter suggested that if FTA intended to impose this requirement on all Section 5311 providers, FTA should indicate that FTA will require an audited statement on a case-by-case basis to avoid unnecessary costs and delays in filing. In particular, this commenter suggests that FTA reduce the burden of this requirement by requiring an audited statement for 5311 providers that have 20 or more vehicles in service. Another commenter suggested that FTA incorporate the CEO certification into the annual Certifications and Assurances.

FTA response: FTA agrees that the proposed Appendix A to Part 630 caused a great deal of confusion, as it mixed the urbanized area NTD reporting requirements with the rural NTD reporting requirements, and duplicated information that is provided in the NTD Reporting Manuals. In order to ensure that the public has a single, consistent reference for NTD information, FTA is no longer proposing to include Appendix A as part of this rule. FTA believes that this change does not have a substantive effect on the regulated public since the same information is available in the NTD Reporting Manuals.

(h) Comments on the Proposed 2007 Rural NTD Module Reporting Manual

FTA received three comments on the proposed 2007 Rural NTD Module Reporting Manual.

Three commenters provided detailed comments on the proposed 2007 Rural

NTD Module Reporting Manual. Although these comments are outside the scope of this rulemaking, FTA considered the comments in the process of finalizing the Rural NTD Reporting Manual.

(i) Additional Technical Revisions

In addition to the revisions discussed above, FTA revised the proposed rule to update the proposed regulation and make certain provisions clearer. Such revisions include: (1) Replacing the term ''section 5335 report'' with the term ''NTD submission'', (2) consistently using the definition of ''reference documents,'' (3) updating the titles of the NTD Manuals, (4) deleting reference to ''optional report fields,'' (5) specifying that the apportionment in § 630.11 is the Section 5307 apportionment, (6) combining § 630.4(a) with § 630.4(b), (7) updating the statutory authority, and (8) changing the title to reflect the commonly-used term ''National Transit Database.'' Additionally, FTA eliminated § 630.12, as it was redundant of existing requirements, and FTA removed language in § 630.4 that specified that FTA would annually mail CDs to reporters, as updated copies of the reference documents are electronically available on FTA's NTD Web site. Reporters without Internet access may continue to request a CD, and reporters without computer access may request a printed copy. These changes have no substantive effect on the regulated public. Pursuant to 5 U.S.C. 553(b)(3)(A), such changes are ''interpretative'' in nature and, FTA is not required to accept or consider comments on them.

Regulatory Process Matters

Executive Order 12866

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This final rule amends the NTD reporting and recordkeeping requirements to require recipients of Nonurbanized Area Formula Grants to report annual transit data to the NTD following previously established guidelines for a voluntary State-based rural data module developed in consultation with State Departments of Transportation.

FTA has determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, and that the direct economic impact of this rulemaking would be minimal. Section 3033 of SAFETEA–LU amended 49 U.S.C. 5335 to require that recipients and beneficiaries of Nonurbanized Area Formula Grants report annual transit data to the NTD. This final rule clarifies existing regulatory requirements, and the changes adopted do not adversely affect, in any material way, any sector of the economy. In addition, the final rule does not interfere with any action taken or planned by another agency and does not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Executive Order 13132

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA analyzed the final rule in accordance with the principles and criteria contained in Executive Order 13132, and FTA determined that this final rule does not have sufficient implications to warrant the preparation of a federalism assessment. FTA also determined that this final rule does not preempt any State law or State regulation or affect States' abilities to discharge traditional government functions.

Executive Order 13175

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities and that impose ''substantial and direct compliance costs'' on such communities. This final rule requires Indian tribes that are recipients of Nonurbanized Formula Program Grants to report to the NTD. In addition, this rule requires Indian tribes that are subrecipients of Nonurbanized Formula Program Grants to report NTD data to the State. FTA analyzed this rule under Executive Order 13175, and determined that the final rule does not have substantial direct effects on one or more Indian tribes; does not impose substantial direct compliance costs on Indian tribal governments; and does not preempt tribal laws. Therefore, a tribal impact statement is not required.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. FTA analyzed this rule under Regulatory Flexibility Act of 1980 and certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (Pub. L. 104–13, 109 Stat. 163), FTA may not conduct or sponsor, and a person is not required to respond to or may not be penalized for failing to comply with, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

OMB approved an extension of FTA paperwork collection number 2132–0008. The new expiration date of this collection number is August 31, 2008. On June 27, 2007, FTA sought to add the collection of rural data under the NTD to this collection number. This rule only has effect to the extent that the data collection provided for under this rule has approval under the Paperwork Reduction Act.

Unfunded Mandates Assessment

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule does not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FTA evaluated any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

National Environmental Policy Act

The National Environmental Policy Act of 1969, (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The rule does not have any effect on the quality of the environment under the National Environmental Policy Act of 1969.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 630

National Transit Database.

■ For the reasons discussed in the preamble, the Federal Transit Administration revises 49 CFR part 630 as follows:

PART 630—NATIONAL TRANSIT DATABASE

Subpart A—General

Sec.

Authority: 49 U.S.C. 5307, 5311, 5335, and 49 CFR 1.51.

§ 630.1 Purpose.

The purpose of this part is to prescribe requirements and procedures necessary for compliance with the National Transit Database Reporting System and Uniform System of Accounts, as mandated by 49 U.S.C. 5335, and to set forth the procedures for addressing a reporting entity's failure to comply with these requirements.

§ 630.2 Scope.

This part applies to all applicants for, and any person that receives benefits directly from, a grant under 49 U.S.C. 5307 or 5311.

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in 49 U.S.C. 5302 *et seq.* apply to this part.

(b) Except as otherwise provided, terms defined in the current editions of the National Transit Database Reporting Manuals and the NTD Uniform System of Accounts are used in this part as so defined.

(c) For purposes of this part:

Administrator means the Federal Transit Administrator or the Administrator's designee.

Applicant means an applicant for assistance under 49 U.S.C. 5307 or 5311.

Assistance means Federal financial assistance for the planning, acquisition, construction, or operation of public transportation services.

Beneficiary means any entity that receives benefits from assistance under 49 U.S.C. 5307 or 5311.

Current edition of the National Transit Database Reporting Manuals and Uniform System of Accounts means the most recently issued editions of the reference documents.

Days mean calendar days.

Reference Document(s) means the current editions of the National Transit Database Reporting Manuals and Uniform System of Accounts. These documents are subject to periodic revision. Beneficiaries and applicants are responsible for using the current editions of the reference documents.

Reporting entity means a transit agency, a State Department of Transportation that is a recipient of grants under 49 U.S.C. 5311, or a Federally-recognized Indian Tribe that is a direct recipient of grants under 49 U.S.C. 5311.

State Department of Transportation means the Department of Transportation of a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, or the U.S. Virgin Islands.

Transit agency means an entity providing public transportation as defined in 49 U.S.C. 5302.

§ 630.4 Requirements.

(a) *National Transit Database Reporting System.* Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. 5307 or 5311 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents. State Departments of Transportation shall provide reports on behalf of their subrecipients of grants under 49 U.S.C. 5311 as specified in the reference documents. Transit agencies that are beneficiaries of grants under both 49 U.S.C. 5307 and 5311 must file an individual report as an urbanized area transit agency. Federally-recognized Indian Tribes that are direct beneficiaries of grants under 49 U.S.C. 5311 must file an individual report. State Departments of Transportation should not report on behalf of transit agencies that have filed individual reports as urbanized area transit agencies nor on behalf of Indian Tribes that are required to file an individual report.

(b) *Copies.* Copies of reference documents are available from the National Transit Database Web site located at *http://www.ntdprogram.gov.* These reference documents are subject to periodic revision. Revisions of reference documents will be posted on the National Transit Database Web site and a notice of any significant changes to the reporting requirements specified in these reference documents will be published in the **Federal Register**.

§ 630.5 Failure to report data.

Failure to report data in accordance with this part will result in the noncompliant reporting entity being ineligible to receive any Section 5307 or 5311 grants directly or indirectly until such time as a report is filed in accordance with this part.

§ 630.6 Late and incomplete reports.

(a) *Late reports.* Each reporting entity shall ensure that FTA receives its report by the due dates prescribed in the reference documents. A reporting entity may request a 30 day extension to submit its report. FTA will treat a failure to submit the required report by the due date or the extension date as failure to report data under § 630.5.

(b) *Incomplete reports.* FTA will treat an NTD submission that does not contain all of the required data; or does not contain the required certifications, where applicable; or that is not in substantial conformance with the definitions, procedures, and format requirements set out in the reference documents as a failure to report data under § 630.5, unless the reporting entity has exhausted all possibilities for obtaining this information.

§ 630.7 Failure to respond to questions.

FTA will review each NTD submission to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, FTA will notify the reporting entity of this fact in writing, and request written justification from the reporting entity to either document the accuracy of the questioned data, or to revise the questioned data with a more accurate submission. Failure of a reporting entity to make a good-faith written response to this request will be treated as a failure to report data under § 630.5.

§ 630.8 Questionable data items.

FTA may enter a zero, or adjust any questionable data item(s), in any reporting entity's NTD submission that is used in computing the Section 5307 apportionment. These adjustments may be made if any data appears to be inaccurate, have not been collected and

reported in accordance with FTA reference documents, or if there is not adequate documentation and a reliable recordkeeping system.

§ 630.9 Notice of FTA action.

Before taking final action under §§ 630.5 or 630.8, FTA will transmit a written request to the reporting entity to provide the necessary information within a specified reasonable period of time. FTA will advise the reporting entity of its final decision.

§ 630.10 Waiver of reporting requirements.

Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a written showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience. Each waiver will be for a specified period of time.

§ 630.11 Data adjustments.

Errors in the data used in making the Section 5307 apportionment may be discovered after any particular year's apportionment is completed. If so, FTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

Issued on: November 29, 2007 at Washington, DC.

James S. Simpson,

Administrator.

[FR Doc. E7–23565 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070913514–7517–01]

RIN 0648–AW04

Pacific Halibut Fisheries; Subsistence Fishing; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendment.

SUMMARY: This action corrects a spelling error in final regulations (FR Doc. 03–8822) that were published in the **Federal Register** on April 15, 2003 (68 FR 18145). This action is necessary to correct a typographical error of an organized tribal entity name in regulations that implement Pacific halibut subsistence fishing management measures. This correcting amendment makes minor, non-substantive changes and does not change operating practices in the subsistence fishery or the rights and obligations of subsistence fishermen managed under the subsistence halibut regulations off Alaska.

DATES: Effective on May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, NMFS, 907–586–7228 or email at *peggy.murphy@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule published April 15, 2003, (68 FR 18145) implemented regulations to authorize and manage subsistence fishing of Pacific halibut (*Hippoglossus stenolepis*). These regulations appear at 50 CFR 300.65. This correcting amendment revises the table titled Halibut Regulatory Area 3B at § 300.65(g)(2) by correcting the spelling of ''Qagan Toyagungin Tribe of Sand Point Village'' under Organized Tribal Entity. The correct spelling is ''Qagan Tayagungin Tribe of Sand Point Village''.

Need for Correction

Current reference to the Organized Tribal Entity Qagan Toyagungin Tribe of Sand Point Village at § 300.65(g)(2) needs to be corrected because the reference is not consistent with the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs published by the Department of Interior (72 FR 13648) on March 22, 2007. This correcting amendment corrects the spelling of the Organized Tribal Entity.

Classification

Pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correcting amendment to the Pacific halibut subsistence fishing regulations. Notice and comment are unnecessary because this action makes only a minor, non-substantive change to correct a typographical error. The amendment does not make any substantive change in the rights and obligations of subsistence halibut fishermen. No aspect of this action is controversial and no change in operating practices in the subsistence fishery is required. Because this action makes only the minor, non-substantive change to § 300.65(g)(2) described above, it is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

Dated: November 30, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.65, paragraph (g)(2), in the table titled ''Halibut Regulatory Area 3B'' the entry for ''Sand Point'' is revised to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(g) * * *

(2) * * *

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
* * * * * * *	
Sand Point	Pauloff Harbor Village Native Village of Unga Qagan Tayagungin Tribe of Sand Point Village

* * * * *

[FR Doc. E7–23695 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 234
Thursday, December 6, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 23, 25, 91, 121, 125, 135, and 139

[Docket No. FAA–2007–0152]

Takeoff/Landing Performance Assessment Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice and request for comments and participation.

SUMMARY: By this notice, the Federal Aviation Administration (FAA) announces the formation of an Aviation Rulemaking Committee to review regulations affecting certification and operation of airplanes and airports for airplane takeoff and landing operations on runways contaminated by snow, slush, ice, or standing water. This review may also encompass related portions of other regulations, as appropriate, and harmonization with other foreign aviation regulations. To get a copy of the Order that established this Aviation Rulemaking Committee go to; *http://www.faa.gov/about/committees/rulemaking/*. The FAA will establish a Takeoff/Landing Performance Assessment Aviation Rulemaking Committee to conduct this review and provide advice and recommendations to:

a. Establish airplane certification and operational requirements (including training) for takeoff and landing operations on contaminated runways.

b. Establish landing distance assessment requirements, including minimum landing distance safety margins, to be performed at the time of arrival.

c. Establish standards for runway surface condition reporting and minimum surface conditions for continued operations.

The FAA invites persons interested in serving on this committee or work groups to request membership in accordance with this notice. The FAA will select members to provide a balance of viewpoints, interests, and expertise. The subjects of the committee meetings will be highly technical and therefore require participants to have significant education background, technical background, and/or work experience for the committee to have the maximum benefit. Membership on the committee will be limited to facilitate discussions and to maintain a balance of interests.

In addition, the FAA invites interested persons to submit specific, detailed written comments, or provide input on the affected regulatory sections. These comments will be considered in the committee discussions and will assist in determining future regulatory action.

DATES: *Membership*: Persons interested in participating on the committee or work groups should submit their request on or before January 7, 2008. Selected members will be advised in writing of their participation and meeting details.

Comments: The FAA will consider all comments on this regulatory review filed on or before February 4, 2008. We will consider comments filed late if it is possible to do so without incurring expense or delay.

ADDRESSES: *Membership:* Persons requesting membership or participation on the Takeoff/Landing Performance Assessment Aviation Rulemaking Committee and/or associated work groups should make the request and supply the requested information via email to the person listed below under **FOR FURTHER INFORMATION CONTACT**.

Send comments identified by Docket Number using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ostronic, AFS–200, 800 Independence Ave., SW., Washington, DC 20591, e-mail: *Jerry.C.Ostronic@FAA.gov,* telephone: (412) 262–9034 Ext. 301, facsimile: (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Background

The Takeoff/Landing Performance Assessment ARC will provide a forum for the U.S. aviation community to discuss incorporating the recommended actions identified in Safety Alert for Operators (SAFO) 06012 into the regulatory requirements. Additionally, adding regulatory requirements for takeoff operations from contaminated runways and issues related to contaminated runway takeoff and landing operations relevant to part 139, Certification of Airports, will be discussed. These discussions will be focused on turbine powered aircraft including both turbojet and turboprop airplanes operated under parts 121, 135, 125, and 91 subpart K.

Public Participation in the Aviation Rulemaking Committee

Membership. The FAA invites members of the public to serve on the Takeoff/Landing Performance Assessment Aviation Rulemaking Committee and/or work groups. The committee will provide advice and recommendations to the FAA to assist the agency in establishing a regulatory framework that will address the added risk associated with takeoff and landing operations on runways with various forms of contamination. The committee acts solely in an advisory capacity. The committee will discuss and present whatever input, guidance, and recommendations it considers relevant.

Because of the diversity and complexities of the Takeoff/Landing Performance Assessment Aviation Rulemaking Committee issues, the committee will be structured with a steering committee and specialized work groups. The steering committee will consist of members selected by the FAA representing aviation associations, industry representatives, employee groups, FAA and other government entities, and other participants to provide a balance of views, interests,

and expertise. Membership on the steering committee will be limited to facilitate discussions. Priority will be given to those applicants representing an identified part of the aviation community who are empowered to speak for those interests.

Additional participation is provided through the specialized work groups. At this time, the FAA is considering the establishment of work groups comprised of subject matter experts in the following subject areas:

—14 CFR Part 25; Airplane Certification Takeoff and Landing Performance
—14 CFR Part 23; Airplane Certification Takeoff and Landing Performance
—14 CFR Part 121; Operations and training associated with takeoff and landing performance
—14 CFR Parts 135, 125, and 91 Subpart K; Operations and training associated with takeoff and landing performance
—14 CFR 139; Airport Certification and Operations
—Current and new technologies for reporting and disseminating aircraft stopping capabilities on contaminated runways
—Other work groups may be established if required.

All non-government representatives serve without government compensation and bear all costs related to their participation on the steering committee or work groups. Members and participants should be available to attend all scheduled committee or work group meetings for the duration of the review. Make your request to participate on the steering committee or specialized work groups in writing on or before January 7, 2008. If wishing to participate on the Takeoff/Landing Performance Assessment Aviation Rulemaking Committee or its workgroups, please provide the following information (preferably by e-mail):

Name:
Title:
Segment(s) of the industry or organization /association you represent:
Organization Representing:
Address:
E-mail address:
Telephone contact information:
Specific area(s) of the committee in which you are interested in participating:
Description of your education, technical background, and/or work experience in the area of the committee in which you would like to participate:
Number of hours you will be available to participate in committee work per month in the first 90 days of the committee; in the first year; and beyond the first year, if necessary; and
Number of days per month that you are available and have the financial capability to travel for committee activities.

The FAA will notify all selected members and participants in writing in advance of the first meeting.

Comments. As noted above, persons wishing to comment on this subject may do so until February 4, 2008. In order to provide information to the committee, the FAA requests that commenters be timely in their comments.

Commenters should be as specific as possible and provide as much detail in comments as necessary to facilitate regulatory decision making. Comments should address the specific section of the regulation at issue, a detailed explanation of what needs to be changed and why, and the proposed regulatory change. Information on costs and benefits of the proposed change are particularly helpful.

Comments provided in response to this notice will assist the FAA and committee in their review and deliberation.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–23740 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0289; Directorate Identifier 2007–NM–208–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 series airplanes. This proposed AD would require sealing the fasteners on the front and rear spars inside the left and right main fuel tanks and on the lower panel of the center fuel tank. This proposed AD would also require inspections of the wire bundle support installations to verify if certain clamps are installed and if Teflon sleeving covers the wire bundles inside the left and right equipment cooling system bays, on the left and right rear spars, and on the left and right front spars; and corrective actions if necessary. This proposed AD results from a fuel system review conducted by the manufacturer. We are proposing this AD to prevent improperly sealed fasteners in the main and center fuel tanks from becoming an ignition source, in the event of a fault current, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by January 22, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0289; Directorate Identifier 2007–NM–208–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will

consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing has found that it is possible for some fuel tank fasteners, in the event of a fault current, to become an ignition source on Boeing Model 757 series airplanes. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007. The service bulletin describes procedures for sealing the fasteners on the front and rear spars inside the left and right main fuel tanks and sealing the fasteners on the lower panel of the center fuel tank. The service bulletin also describes procedures for doing general visual inspections of the wire bundle support installations to verify if certain full cushion clamps are installed and to confirm if the wire bundles are covered in Teflon sleeving at the following locations: Inside the left and right equipment cooling system bays, on the left and right rear spars, and on the left and right front spars. The service bulletin also describes procedures for doing corrective actions if necessary, which include replacing any incorrect clamps with certain full cushion clamps and installing any missing Teflon sleeving. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference between the Proposed AD and Service Bulletin.''

Difference Between the Proposed AD and Service Bulletin

The compliance table in paragraph 1.E. of the service bulletin recommends accomplishing the corrective actions (clamp replacement and installation of Teflon sleeving) within 5 years of the date on the service bulletin. This AD, however, would require accomplishing the corrective actions, if necessary, before further flight after accomplishing the inspections. We have coordinated this difference with Boeing.

Costs of Compliance

There are about 1,049 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 539 airplanes of U.S. registry. The proposed actions would take up to 545 work hours per airplane depending on the airplane configuration, at an average labor rate of $80 per work hour. Required parts would cost about $325 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is up to $23,675,575, or up to $43,925 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–0289; Directorate Identifier 2007–NM–208–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007.

Unsafe Condition

(d) This AD results from a fuel system review conducted by the manufacturer. We are issuing this AD to prevent improperly sealed fasteners in the main and center fuel tanks from becoming an ignition source, in the event of a fault current, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Fastener Sealing and Inspections

(f) Within 60 months after the effective date of this AD, seal the applicable fasteners and do the general visual inspections of the wire bundle support installations, and do all the applicable corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on November 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–23639 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0284; Directorate Identifier 2004–SW–06–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61A, S–61D, S–61E, and S–61V Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters. The AD would require installing an electric chip detector on each engine and an on-board chip detector annunciation system. The AD would also require revising the Rotorcraft Flight Manual (RFM) to add procedures for crew response to the illumination of an on-board chip detector warning light. This AD would also require testing the engine chip detector system at specified intervals. This proposal is prompted by reports of Number 5 engine bearing failures. Failure of the bearing resulted in erratic movement of the high-speed, engine-to-transmission shaft (shaft), an oil leak, an in-flight fire, and an emergency landing. The actions specified by the proposed AD are intended to detect an impending bearing failure, which if undetected and not addressed by appropriate crew action may result in an oil leak, a severed shaft housing, an uncontained in-flight fire, and a subsequent emergency landing.

DATES: Comments must be received on or before February 4, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, phone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com.*

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2007–0284, Directorate Identifier 2004–SW–06–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for Sikorsky Model S–61A, S–61D, S–61E, and S–61V helicopters with GE CT58 series engines. The AD would require, within 60 days, installing an electric chip detector for the Number 5 bearing in both engines. The AD would also require installing an on-board chip detector annunciation system and revising the Emergency Procedures section of the RFM to add procedures for crew response to the illumination of an on-board chip detector warning light. In addition, the AD would require functional testing of the chip detector system at specified intervals. This proposal is prompted by five reports of bearing failure, which results in an oil leak, uneven rotation of the shaft, failure of the shaft housing, which is part of the fire containment system, and friction. The heat produced by this friction may ignite the leaking oil and result in an uncontained fire. The actions specified by the proposed AD are intended to detect an impending bearing failure, which if undetected and not addressed by appropriate crew action may result in an oil leak, severed shaft housing, an uncontained in-flight fire, and a subsequent emergency landing.

The FAA has reviewed Sikorsky Alert Service Bulletin No. 61B30–15A, Revision A, dated October 20, 2003 (ASB). The Sikorsky ASB describes procedures for installing an engine chip detector system that will provide an ''in-cockpit monitoring system'' as a means to detect metallic chips if bearing deterioration occurs in either engine. Also, the FAA has reviewed General Electric (GE) Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003 (SB). The GE SB describes procedures for installing an alternate electrical chip detector (either part number 3018T72P01, cannon-type connector, or 3049T42P01, stud-type connector) to the power turbine accessory drive assembly.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require the following within 60 days:

- Installing an electric chip detector on each engine.
- Installing an on-board chip detector annunciation system.
- Thereafter, before further flight and at specified intervals, performing a functional test of the chip detector system.
- Revising the RFM to add emergency procedures for crew response to the illumination of an on-board chip detector warning light.

The actions would be required to be done following specified portions of the the service bulletins described previously.

The FAA estimates that this proposed AD would affect 7 helicopters of U.S. registry. The proposed actions would take about 81.5 work hours per helicopter to install the engine chip detector and the on-board cockpit annunciation system. The proposed repetitive tests would affect about 7 helicopters and require 6 tests per year and require 1 work hour per test for 10 years of operating service. The average labor rate is $80 per work hour. Required parts would cost about $1,940 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $92,820 for the entire fleet

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft economic evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2007–0284; Directorate Identifier No. 2004–SW–06–AD.

Applicability

Model S–61A, S–61D, S–61E, and S–61V helicopters with GE CT 58 series engines installed, certificated in any category.

Compliance

Required within 60 days, unless accomplished previously.

To detect an impending Number 5 engine bearing (bearing) failure, which if undetected and not addressed by appropriate crew action may result in an oil leak, severed shaft housing, an uncontained in-flight fire, and a subsequent emergency landing, do the following:

(a) Remove engine chip detector, part number (P/N) 205T33P01, and install engine chip detector, part number (P/N) 3049T42P01 or 3018T72P01, in the engine power turbine accessory drive assembly of each engine. Install the chip detector by following the Accomplishment Instructions, paragraph 3.B., of General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003.

Note: This AD neither requires installing GE CT58 engines nor replacing an engine power turbine accessory drive assembly that has a 5/16 inch magnetic plug port and applies only to Sikorsky Model S–61A, S–61D, S–61E, and S–61V helicopters with GE CT58 series engines installed.

(b) Install an on-board engine chip detector annunciation system by following the Accomplishment Instructions, paragraphs 3.B. or 3.C., as appropriate for the different manufacturers of the master warning caution panel, of the Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15A,

Revision A, dated October 20, 2003 (Sikorsky ASB).

(c) After doing paragraph (b) of this AD, before further flight, perform a functional test of the engine chip detector system. Repeat the test at intervals not to exceed 150 hours time-in-service. Conduct the tests following the Accomplishment Instructions, paragraph 3.D., of the Sikorsky ASB.

(d) Insert the emergency procedures contained in the Accomplishment Instructions, paragraph 3.E., of the Sikorsky ASB for an on-board engine chip detector warning indicator light into the Emergency Procedures section of the applicable Rotorcraft Flight Manual.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) This amendment becomes effective on February 4, 2008.

Issued in Fort Worth, Texas, on November 27, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–23604 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7747]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 5, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7747, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or.(e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Furnas County, Nebraska, and Incorporated Areas				
Medicine Creek	Approximately 0.17 mile downstream of U.S. Highway 6	None	+2257	City of Cambridge, Unincorporated Areas of Furnas County.
	Approximately 300 feet upstream of Road 409	None	+2270	
Republican River	Approximately 3.18 miles downstream of State Highway 47.	None	+2243	City of Cambridge, Unincorporated Areas of Furnas County.
	Approximately 480 feet upstream of State Highway 47 ..	+2266	+2263	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Community Name

City of Cambridge
Maps are available for inspection at 722 Patterson Avenue, Cambridge, NE 69022.

Unincorporated Areas of Furnas County
Maps are available for inspection at 912 R Street, Beaver City, NE 68926.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 28, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23701 Filed 12–5–07; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7749]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 5, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7749, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or. (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
City of Troy, Michigan					
Michigan	City of Troy	Hawthorn Drain	Downstream side of Dequindre Road	+630	+629
			Approximately 750 feet upstream of Minnesota Road.	+634	+635
Michigan	City of Troy	Shanahan Drain (West of Henry Graham Drain).	Inlet to Henry Graham Drain	+642	+639
			Downstream side of John R Road	+645	+644
	City of Troy	Spencer-Barnard Drain (East).	Downstream side of Dequindre Road	+631	+630
			Upstream side of Minnesota Road	+633	+632
	City of Troy	Spencer-Barnard Drain (West).	Upstream side of John R Road	+638	+639
			Approximately 1,800 feet upstream of Maple Road.	+663	+662

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Troy

Maps are available for inspection at 500 West Big Beaver Road, Troy, MI 48084.

City of Sturgis, South Dakota					
South Dakota	City of Sturgis	Bear Butte Creek	At eastern corporate limits	None	*3339
			Approximately 3,400 feet upstream of DM&E railroad.	None	*3566
	City of Sturgis	Cook Canyon	Just downstream of DM&E railroad	*3448	*3446
			Just downstream of Interstate 90	*3476	*3480
	City of Sturgis	Deadman Gulch	Approximately 200 feet downstream of Interstate 90.	None	*3528
			At Elk Road	None	*3600
	City of Sturgis	Dolan Creek	At confluence with Bear Butte Creek	*3374	*3378
			Approximately 200 feet upstream of Dolan Creek Road.	None	*3570
	City of Sturgis	East Vanocker Creek	At confluence with Vanocker Creek, downstream of Otter Road.	None	*3529
			Just downstream of DM&E railroad	None	*3554
	City of Sturgis	South Dolan Creek	At confluence with Dolan Creek just upstream of Interstate 90.	None	*3503

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
	City of Sturgis	Vanocker Creek	At southern corporate limits	None	*3570
			At confluence with Vanocker Creek	*3456	*3458
			At Vanocker Road	None	*3595
	City of Sturgis	West Vanocker Creek	At confluence with Vanocker Creek, just upstream of DM&E railroad.	None	*3540
			Just downstream of Pineview Drive	None	*3590

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
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ADDRESSES

City of Sturgis

Maps are available for inspection at 1040 Second Street, Suite 102, Sturgis, SD 57785.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Putnam County, Georgia, and Incorporated Areas				
Rooty Creek	Approximately 60 feet upstream of Oconee Springs Road.	None	+452	City of Eatonton.
	Approximately 2,380 feet upstream of Sparta Highway/State Highway 16/State Highway 44.	None	+479	

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ADDRESSES

City of Eatonton

Maps are available for inspection at 201 North Jefferson Avenue, Eatonton, GA 31204.

Barry County, Michigan, and Incorporated Areas				
Bristol Lake	Entire shoreline of Bristol Lake	None	+910	Township of Johnstown.
Gull Lake	Entire shoreline of Gull Lake	None	+882	Township of Barry, Township of Prairieville.
Gun Lake	Entire shoreline of Gun Lake	None	+746	Township of Orangeville, Township of Yankee Springs.
Hathaway Lake	Entire shoreline of Hathaway Lake	None	+791	Township of Rutland.
Lake North Ridge	Entire shoreline of Lake North Ridge	None	+870	City of Hastings.
Mud Creek	Confluence with Thornapple Lake	None	+803	Township of Castleton, Township of Woodland.
	Downstream side of Saddlebag Lake Road	None	+823	
Thornapple River	Approximately 0.5 mile upstream of Thornapple Lake Road.	+804	+805	Township of Castleton, Village of Nashville.
	Approximately 1 mile upstream of N Main Street	+817	+814	
	Approximately 3 miles upstream of N Broadway Street.	None	+771	Township of Hastings, Township of Rutland.
	Approximately 1.2 mile downstream of N Broadway Street.	None	+773	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Depth in feet above ground.

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ADDRESSES

City of Hastings

Maps are available for inspection at 102 S Broadway Street, Hastings, MI.

Township of Assyria

Maps are available for inspection at 8094 Tasker, Bellevue, MI.

Township of Baltimore

Maps are available for inspection at 3100 E. Dowling Road, Hastings, MI.

Township of Barry

Maps are available for inspection at 155 E. Orchard Street, Delton, MI.

Township of Carlton

Maps are available for inspection at 85 Welcome Road, Hastings, MI.

Township of Castleton

Maps are available for inspection at 915 Reed Street, Nashville, MI.

Township of Hastings

Maps are available for inspection at 885 River Road, Hastings, MI.

Township of Hope

Maps are available for inspection at 5463 S. M–43 Highway, Hastings, MI.

Township of Irving

Maps are available for inspection at 3425 Wing Road, Hastings, MI.

Township of Johnstown

Maps are available for inspection at 13641 South M–37 Highway, Battle Creek, MI.

Township of Maple Grove

Maps are available for inspection at 721 Durkee, Nashville, MI.

Township of Orangeville

Maps are available for inspection at 7350 Lindsey Road, Plainwell, MI.

Township of Prairieville

Maps are available for inspection at 10115 S. Norris Road, Delton, MI.

Township of Rutland

Maps are available for inspection at 2461 Heath Road, Hastings, MI.

Township of Thornapple

Maps are available for inspection at 200 E Main Street, Middleville, MI.

Township of Woodland

Maps are available for inspection at 156 S. Main Street, Woodland, MI.

Township of Yankee Springs

Maps are available for inspection at 284 N. Briggs Road, Middleville, MI.

Village of Freeport

Maps are available for inspection at 200 S. State Street, Freeport, MI.

Village of Middleville

Maps are available for inspection at 100 E. Main Street, Middleville, MI.

Village of Nashville

Maps are available for inspection at 206 N. Main Street, Nashville, MI.

Village of Woodland

Maps are available for inspection at 171 N. Main Street, Woodland, MI.

Kalamazoo County, Michigan, and Incorporated Areas

Flowerfield Creek	Approximately 0.6 mile downstream of West YZ Avenue.	None	+843	Township of Prairie Ronde.
	Approximately 25 feet upstream of 22nd Street	None	+890	
East Tributary	Confluence of Flowerfield Creek	None	+858	Township of Prairie Ronde.
	Approximately 100 feet upstream of West W Avenue	None	+878	
West Tributary	Confluence of Flowerfield Creek	None	+873	Township of Prairie Ronde.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 100 feet upstream of West W Avenue	None	+886	
Gourdneck Lake	Entire shoreline of Gourdneck Lake	None	+853	Township of Schoolcraft.
Grass Lake	Entire shoreline of Grass Lake	None	+879	Township of Richland.
Gull Lake	Entire shoreline of Gull Lake	None	+882	Township of Richland, Township of Ross.
Kalamazoo River	Approximately 75 feet upstream side of S 35th Street	None	+779	City of Galesburg.
	Approximately 150 feet upstream of Climax Drive	None	+786	
	Approximately 600 feet east of the intersection of W G Avenue and N Pitcher Street at the City of Parchment/Charter Township of Cooper corporate limits.	None	+755	City of Parchment.
	Approximately 25 feet downstream of E Mosel Avenue.	None	+759	
Little Sugarloaf Lake.	Entire shoreline of Little Sugarloaf Lake	None	+860	Township of Schoolcraft.
	Entire shoreline of Little Sugarloaf Lake	+861	+860	City of Portage.
Spring Creek	Approximately 0.9 mile downstream of S 15th Street	None	+834	Township of Schoolcraft.
	Approximately 400 feet upstream of S 14th Street	None	+855	
Sugarloaf (Lower) Lake	Entire shoreline of Sugarloaf (Lower) Lake	None	+859	Township of Schoolcraft.
Sugarloaf (Upper) Lake	Entire shoreline of Sugarloaf (Upper) Lake	None	+861	Township of Schoolcraft.
Weeds Lake	Entire shoreline of Weeds Lake	None	+882	Charter Township of Texas.

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ADDRESSES

Charter Township of Oshtemo

Maps are available for inspection at 7275 W Main Street, Kalamazoo, MI.

Charter Township of Texas

Maps are available for inspection at 7110 W. Q Avenue, Kalamazoo, MI.

City of Galesburg

Maps are available for inspection at 200 E Michigan Avenue, Galesburg, MI.

City of Kalamazoo

Maps are available for inspection at 241 W South Street, Kalamazoo, MI.

City of Parchment

Maps are available for inspection at 650 South Riverview Drive, Parchment, MI.

City of Portage

Maps are available for inspection at 7900 S. Westnedge Avenue, Portage, MI.

Township of Alamo

Maps are available for inspection at 7901 N. 6th Street, Kalamazoo, MI.

Township of Brady

Maps are available for inspection at 13123 South 24th Street, Vicksburg, MI.

Township of Charleston

Maps are available for inspection at 1499 South 38th Street, Galesburg, MI.

Township of Climax

Maps are available for inspection at 151 South Main, Climax, MI.

Township of Comstock

Maps are available for inspection at 6138 King Highway, Comstock, MI.

Township of Cooper

Maps are available for inspection at 1590 W D Avenue, Kalamazoo, MI.

Township of Kalamazoo

Maps are available for inspection at 1720 Riverview Drive, Kalamazoo, MI.

Township of Pavilion

Maps are available for inspection at 7510 Q Avenue E, Scotts, MI.

Township of Prairie Ronde

Maps are available for inspection at 8140 West W Avenue, Schoolcraft, MI.

Township of Richland

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at 7401 N 32nd Street, Richland, MI.				
Township of Ross				
Maps are available for inspection at 12086 E M–89, Richland, MI.				
Township of Schoolcraft				
Maps are available for inspection at 50 E. VW Avenue, Vicksburg, MI.				
Township of Wakeshma				
Maps are available for inspection at 13988 South 42nd St, Fulton, MI.				
Village of Augusta				
Maps are available for inspection at 109 W Clinton Street, Augusta, MI.				
Village of Climax				
Maps are available for inspection at 114 East Maple Street, Climax, MI.				
Village of Richland				
Maps are available for inspection at 8100 North 32nd Street, Richland, MI.				
Village of Schoolcraft				
Maps are available for inspection at 154 W. Eliza Street, Schoolcraft, MI.				
Village of Vicksburg				
Maps are available for inspection at 126 N Kalamazoo Avenue, Vicksburg, MI.				
Bertie County, North Carolina, and Incorporated Areas				
Barbeque Swamp	Approximately 0.8 mile downstream of the Bertie/Hertford County boundary.	None	+13	Unincorporated Areas of Bertie County.
	Approximately 1.2 miles upstream of Meadow Road (State Road 1312).	None	+50	
Beaverdam Swamp	At the confluence with Loosing Swamp	None	+32	Unincorporated Areas of Bertie County.
	Approximately 2.5 miles upstream of the confluence with Loosing Swamp.	None	+41	
Black Walnut Swamp	Approximately 3.1 miles upstream of the confluence with Albemarle Sound.	None	+6	Unincorporated Areas of Bertie County.
	Approximately 4.4 miles upstream of the confluence with Albemarle Sound.	None	+18	
Chinkapin Swamp	At the Bertie/Herfttford County boundary	None	+14	Unincorporated Areas of Bertie County, Town of Colerain.
	Approximately 2.2 miles upstream of NC 42 Highway	None	+48	
Cricket Swamp	Approximately 100 feet upstream of NC 45	None	+12	Unincorporated Areas of Bertie County.
	Approximately 0.8 mile upstream of Holley Road (State Road 1387).	None	+50	
Cypress Swamp	At the confluence with Chinkapin Swamp	None	+21	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of Nowell Farm Road (State Road 1314).	None	+49	
Eason Swamp	At the confluence with Loosing Swamp and Wildcat Swamp.	None	+37	Unincorporated Areas of Bertie County.
	Approximately 1.3 miles upstream of Sheriff Garrett Road (State Road 1246).	None	+47	
Eastmost Swamp	Approximately 10 feet upstream of Nixon Road (State Road 1354).	None	+43	Unincorporated Areas of Bertie County.
	Approximately 1,950 feet upstream of Perrytown Road (State Road 1344).	None	+58	
Tributary 1	Approximately 20 feet upstream of Farless Road (State Road 1355).	None	+35	Unincorporated Areas of Bertie County.
	Approximately 0.9 mile upstream of Farless Road	None	+38	
Tributary 2	Approximately 20 feet upstream of NC 45	None	+41	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of the confluence of Eastmost Swamp Tributary 2A.	None	+48	
Tributary 2A	At the confluence with Eastmost Swamp Tributary 2	None	+41	Unincorporated Areas of Bertie County.
	Approximately 170 feet downstream of Blackrock Road (State Road 1358).	None	+51	
Fort Branch	At the Town of Aulander Extraterritorial Jurisdiction/Hertford County boundary.	None	+55	Unincorporated Areas of Bertie County, Town of Aulander.

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		Effective	Modified	
	Approximately 1,430 feet upstream of East Elm Street	None	+64	
Tributary 1	At the confluence with Fort Branch	None	+60	Town of Aulander.
	Approximately 0.5 mile upstream of North Commerce Street.	None	+71	
Tributary 2	At the confluence with Fort Branch	None	+61	Town of Aulander.
	Approximately 1,030 feet upstream of Bell Street	None	+69	
Loosing Swamp	At the confluence with Quidccoson Swamp	None	+27	Unincorporated Areas of Bertie County.
	At the confluence of Eason Swamp and Wildcat Swamp.	None	+37	
Tributary 1	At the confluence with Loosing Swamp	None	+28	Unincorporated Areas of Bertie County.
	Approximately 1.2 miles upstream of the confluence with Loosing Swamp.	None	+41	
Quidccoson Swamp	At the confluence with Loosing Swamp	None	+27	Unincorporated Areas of Bertie County.
	Approximately 0.4 mile upstream of Cremo Road (State Road 1313).	None	+52	
Swamp Tributary 1	At the confluence with Quidccoson Swamp	None	+27	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of the confluence with Quidccoson Swamp.	None	+36	
Swamp Tributary 2	At the confluence with Quidccoson Swamp	None	+32	Unincorporated Areas of Bertie County.
	Approximately 1.1 miles upstream of U.S. 13 Highway	None	+48	
Swamp Tributary 3	At the confluence with Quidccoson Swamp	None	+35	Unincorporated Areas of Bertie County.
	Approximately 0.9 mile upstream of the confluence with Quidccoson Swamp.	None	+49	
Swamp Tributary 4	At the confluence with Quidccoson Swamp	None	+44	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of the confluence with Quidccoson Swamp.	None	+53	
Stony Creek	Approximately 1,100 feet downstream of the Bertie/Hertford County boundary.	None	+25	Unincorporated Areas of Bertie County.
	The confluence of Loosing Swamp	None	+27	
Unnamed Tributary #1	Approximately 10 feet upstream of NC 17	None	+21	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of U.S. 17 Highway N.	None	+23	
Wildcat Swamp	At the confluence with Loosing Swamp and Eason Swamp.	None	+37	Unincorporated Areas of Bertie County.
	Approximately 1,240 feet upstream of the confluence of Wildcat Swamp Tributary 2.	None	+39	
Tributary 1	At the confluence with Wildcat Swamp	None	+37	Unincorporated Areas of Bertie County.
	Approximately 1.0 mile upstream of the confluence with Wildcat Swamp.	None	+44	
Tributary 2	At the confluence with Wildcat Swamp	None	+39	Unincorporated Areas of Bertie County.
	Approximately 0.8 mile upstream of the confluence with Wildcat Swamp.	None	+42	

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ADDRESSES

Unincorporated Areas of Bertie County

Maps are available for inspection at Bertie County Building Inspections Department, 106 Dundee Street, Windsor, NC.

Town of Aulander

Maps are available for inspection at Town of Aulander Municipal Building, 124 West Main Street, Aulander, NC.

Town of Colerain

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at Colerain Town Hall, 101 B. Winton Road, Colerain, NC.				
Caldwell County, North Carolina, and Incorporated Areas				
Little Gunpowder Creek (near Town of Hudson).	At confluence with Gunpowder Creek	None	+1046	Unincorporated Areas of Caldwell County, Town of Cajahs Mountain, Town of Granite Falls, Town of Hudson, Town of Sawmills.
	Approximately 1.4 miles upstream of Little Gunpowder Creek Drive.	None	+1261	
Zacks Fork Creek	At the confluence with Lower Creek	+1092	+1088	Unincorporated Areas of Caldwell County, City of Lenoir.
	Approximately 800 feet downstream of Northeast Georgetown Road.	+1140	+1139	

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ADDRESSES

City of Lenoir

Maps are available for inspection at Lenoir City Hall, 801 West Avenue Northwest, 3rd Floor, Lenoir, NC.

Town of Cajahs Mountain

Maps are available for inspection at Cajahs Mountain Town Hall, 1800 Connelly Springs Road, Lenoir, NC.

Town of Granite Falls

Maps are available for inspection at Granite Falls Town Hall, 30 Park Square, Granite Falls, NC.

Town of Hudson

Maps are available for inspection at Hudson Town Hall, 550 Central Street, Hudson, NC.

Town of Sawmills

Maps are available for inspection at Sawmills Town Hall, 4076 U.S. Highway 321A, Sawmills, NC.

Unincorporated Areas of Caldwell County

Maps are available for inspection at Caldwell County Courthouse, 1051 Harper Avenue, Lenoir, NC.

Forsyth County, North Carolina, and Incorporated Areas				
Abbotts Creek	Approximately 600 feet downstream of Shields Road	+885	+886	Town of Kernersville.
	Approximately 40 feet downstream of Lindsay Street	None	+921	
Tributary 2	Approximately 350 feet upstream of the confluence with Abbotts Creek.	None	+866	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.4 mile upstream of I–40 Highway	None	+886	
Tributary 2A	At the confluence with Abbotts Creek Tributary 2	None	+866	Town of Kernersville.
	Approximately 1,250 feet upstream of the confluence with Abbotts Creek Tributary 2.	None	+888	
Bashavia Creek	At the confluence with Yadkin River	None	+733	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 580 feet upstream of Balsom Road (State Road 1455).	None	+829	
Beaver Dam Creek	Approximately 250 feet upstream of the confluence with Muddy Creek.	+819	+820	Village of Tobaccoville.
	Approximately 100 feet downstream of Shore Road (State Road 1632).	None	+822	
Tributary	At the confluence with Beaver Dam Creek	None	+821	Village of Tobaccoville.
	Approximately 800 feet upstream of the confluence with Beaver Dam Creek.	None	+826	
Berry Branch	Approximately 0.4 mile upstream of Peachtree Street	None	+781	City of Winston-Salem.
	Approximately 0.5 mile upstream of Peachtree Street	None	+784	
Bethabara Branch	Approximately 0.7 mile upstream of Bethabara Road	None	+818	City of Winston-Salem.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 300 feet downstream of Shattalon Drive (State Road 1686).	None	+822	
Bill Branch	Approximately 80 feet upstream of the dam	None	+784	Unincorporated Areas of Forsyth County.
	Approximately 0.5 mile upstream of the dam	None	+785	
Blacks Creek	At the confluence with Double Creek	None	+708	Unincorporated Areas of Forsyth County.
	Approximately 350 feet upstream of Concord Church Road (State Road 1171).	None	+716	
Blanket Bottom Creek	At the confluence with Yadkin River	None	+701	Unincorporated Areas of Forsyth County, Town of Lewisville, Village of Clemmons.
	Approximately 1,950 feet upstream of Kensford Drive	None	+883	
Brushy Fork	At the Forsyth/Davidson County boundary	None	+850	Unincorporated Areas of Forsyth County.
	Approximately 20 feet upstream of the Forsyth/Davidson County boundary.	None	+850	
Tributary	Approximately 1,200 feet upstream of the confluence with Brushy Fork Creek.	None	+790	City of Winston-Salem.
	Approximately 1,850 feet upstream of the confluence with Brushy Fork Creek.	None	+796	
Caudle Branch	At the confluence with Yadkin River	None	+714	Unincorporated Areas of Forsyth County.
	Approximately 1,040 feet upstream of Hounds Ridge Road.	None	+730	
Cloverleaf Branch	Approximately 650 feet upstream of Stadium Drive	None	+791	City of Winston-Salem.
	Approximately 210 feet upstream of U.S. Route 421	None	+815	
Crooked Run Creek Tributary	At the Forsyth/Stokes County boundary	None	+935	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 500 feet upstream of the confluence of Crooked Run Creek Tributary 2 of Tributary.	None	+977	
Tributary 2	At the confluence with Crooked Run Creek Tributary	None	+970	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 1,200 feet upstream of the confluence with Crooked Run Creek Tributary.	None	+986	
Double Creek	At the confluence with Yadkin River	None	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.7 mile upstream of the confluence of Blacks Creek.	None	+708	
Ellison Creek	At the confluence with Yadkin River	None	+705	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 1.1 miles upstream of Styers Ferry Road (State Road 1166).	None	+720	
Fries Branch	At the confluence with Fries Creek	+804	+801	Unincorporated Areas of Forsyth County.
	Approximately 140 feet upstream of Walker Road (State Road 1470).	+844	+846	
Fries Creek	At the confluence with Yadkin River	None	+739	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of Waller Road (State Road 1470).	+819	+822	
Harmon Mill Creek	Approximately 50 feet downstream side of Masten Drive.	None	+882	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.4 mile upstream of Masten Drive	None	+892	
Hartley Creek	Approximately 350 feet upstream of the confluence with Belews Creek.	None	+759	Unincorporated Areas of Forsyth County.
	Approximately 1.9 mile upstream of the confluence with Belews Creek.	None	+796	
Hauser Creek	At the confluence with Ellison Creek	None	+705	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the confluence with Ellison Creek.	None	+718	

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Johnson Creek	At the confluence with Yadkin River	+707	+698	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 0.6 mile upstream of Middlebrook Drive.	None	+768	
Tributary	At the confluence with Johnson Creek	+707	+698	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 300 feet upstream of Carriagebrook Court.	None	+727	
Tributary 2	At the confluence with Johnson Creek	None	+708	Village of Clemmons.
	Approximately 360 feet upstream of Doublegate Drive	None	+779	
Kerners Mill Creek	Approximately 700 feet downstream of Southern Street.	None	+929	Town of Kernersville.
	Approximately 1,560 feet upstream of Southern Street	None	+954	
Tributary	Approximately 1,000 feet upstream of the confluence with Kerners Mill Creek.	None	+899	Town of Kernersville.
	Approximately 390 feet upstream of Deere-Hitachi Road.	None	+958	
Lowery Mill Creek	Approximately 1,050 feet downstream of New Walkertown Road/U.S. Highway 311.	None	+894	Unincorporated Areas of Forsyth County.
	Approximately 330 feet downstream of New Walkertown Road/U.S. Highway 311.	None	+901	
Mary Reich Creek	At the Forsyth/Davidson County boundary	None	+811	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the Forsyth/Davidson County boundary.	None	+835	
Mill Creek No. 3	Approximately 0.9 mile upstream of Bowens Road (State Road 1625).	None	+869	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 840 feet upstream of Tobaccoville Road.	None	+999	
Mill Creek Tributary	Approximately 830 feet upstream of East Hanes Mill Road.	None	+824	City of Winston-Salem.
	Approximately 1,190 feet upstream of East Hanes Mill Road.	None	+830	
Mill Creek West	At the confluence with Yadkin River	None	+730	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 0.4 mile upstream of Wyntfield Drive	None	+822	
Muddy Creek	At the downstream side of Interstate 40	+711	+710	Unincorporated Areas of Forsyth County, City of Winston-Salem, Village of Clemmons.
	Approximately 0.9 mile upstream of South Peace Haven Road (State Road 1140).	+717	+718	
Tributary	Approximately 200 feet upstream of Cedar Trails	None	+758	City of Winston-Salem.
	Approximately 1,000 feet upstream of Cedar Trails	None	+778	
Tributary 1A	Approximately 400 feet upstream of the confluence with Muddy Creek Tributary.	+749	+748	City of Winston-Salem.
	Approximately 0.4 mile upstream of the confluence with Muddy Creek Tributary.	None	+791	
Old Richmond Creek	At the confluence with Yadkin River	None	+753	Unincorporated Areas of Forsyth County.
	Approximately 2.7 miles upstream of Donnaha Road (State Road 1600).	None	+844	
Panther Creek	At the confluence with Double Creek	None	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.8 mile upstream of Williams Road (State Road 1173).	None	+717	
Tributary 1	At the confluence with Panther Creek	None	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of the confluence with Panther Creek.	None	+723	
Parkway Branch	At the confluence with Salem Creek	+740	+742	City of Winston-Salem.
	Approximately 1,580 feet upstream of South Main Street.	None	+826	
Peters Creek	Approximately 1,260 feet upstream of the confluence of North School Branch.	None	+836	City of Winston-Salem.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,550 feet upstream of the confluence of North School Branch.	None	+837	
Reedy Fork (Stream No. 51)	At the Forsyth/Guilford County boundary	None	+878	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.6 mile upstream of the Forsyth/Guilford County boundary.	None	+892	
Reynolds Creek	Approximately 1,500 feet upstream of Fairhaven Road.	None	+781	Town of Lewisville.
	Approximately 0.8 mile upstream of Fairhaven Road	None	+810	
Salem Creek	Approximately 100 feet downstream of Ebert Road	+728	+727	Unincorporated Areas of Forsyth County, City of Winston-Salem.
	Approximately 250 feet upstream of Silas Creek Parkway/NC Highway 67.	+745	+746	
Silas Creek	Approximately 0.6 mile upstream of Old Town Club Drive.	None	+889	City of Winston-Salem.
	Approximately 90 feet downstream of University Parkway.	None	+896	
South Fork Muddy Creek	Approximately 350 feet downstream of High Point Road.	None	+877	Unincorporated Areas of Forsyth County, City of Winston-Salem.
	Approximately 0.8 mile upstream of Temple School Road (State Road 2685).	None	+935	
Spurgeon Creek	At the Forsyth/Davidson County boundary	None	+819	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the Davidson/Forsyth County boundary.	None	+847	
Terry Road Branch	Approximately 75 feet downstream of Terry Road	None	+883	City of Winston-Salem.
	Approximately 300 feet upstream of Salem Gardens Drive.	None	+917	
Tomahawk Branch	Approximately 300 feet upstream of Twin Meadows Drive.	+785	+784	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 300 feet downstream of Robinhood Road.	+789	+794	
Yadkin River	At the Forsyth/Davidson County boundary	None	+691	Unincorporated Areas of Forsyth County, Town of Lewisville, Village of Clemmons.
	Approximately 700 feet upstream of the Forsyth/Surry County boundary.	None	+758	
Tributary 4	At the confluence with Yadkin River	None	+702	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 0.9 mile upstream of the confluence with Yadkin River.	None	+718	
Tributary 5	At the confluence with Yadkin River	None	+713	Unincorporated Areas of Forsyth County.
	Approximately 740 feet upstream of Williams Road (State Road 1173).	None	+732	
Tributary 6	At the confluence with Yadkin River	None	+723	Unincorporated Areas of Forsyth County.
	Approximately 0.7 mile upstream of the confluence with Yadkin River.	None	+727	
Tributary 7	At the confluence with Yadkin River	None	+724	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of the confluence with Yadkin River.	None	+734	
Tributary 8	At the confluence with Yadkin River	None	+727	Unincorporated Areas of Forsyth County.
	Approximately 1.0 mile upstream of the confluence with Yadkin River.	None	+731	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Winston-Salem

Maps are available for inspection at City of Winston-Salem Inspections Department, 100 East First Street, Suite 328, Winston-Salem, NC.

Town of Bethania

Maps are available for inspection at Bethania Town Hall, 5490 Bethania Road, Bethania, NC.

Town of Kernersville

Maps are available for inspection at Kernersville Town Hall, Planning Department, 134 East Mountain Street, Kernersville, NC.

Town of Lewisville

Maps are available for inspection at Lewisville Town Hall, 6550 Shallowford Road, Lewisville, NC.

Town of Rural Hall

Maps are available for inspection at Rural Hall Town Hall, 423 Bethania-Rural Hall Road, Rural Hall, NC.

Town of Walkertown

Maps are available for inspection at Walkertown Town Hall, 5177 Main Street, Walkertown, NC.

Unincorporated Areas of Forsyth County

Maps are available for inspection at Forsyth City/County Planning Board Office, 100 East First Street, Winston-Salem, NC.

Village of Clemmons

Maps are available for inspection at Clemmons Village Hall, 3715 Clemmons Road, Clemmons, NC.

Village of Tobaccoville

Maps are available for inspection at Tobaccoville Village Hall, 6936 Doral Drive, Tobaccoville, NC.

Washington County, Oregon, and Incorporated Areas

Beal Creek	Approximately 750 feet upstream from Highway 47	None	*166	City of Forest Grove, Unincorporated Areas of Washington County.
	Approximately 765 feet upstream from Main St	None	*169	
Beaverton Creek	Approximately 20 feet upstream of SW 197th Ave	*155	*157	City of Beaverton, City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 870 feet upstream from SW Laurelwood Ave.	None	*263	
Bethany Creek	Approximately 0.21 miles downstream from NW 185th Ave.	*169	*170	Unincorporated Areas of Washington County.
	Approximately 0.58 miles downstream from NW West Union Rd.	None	*184	
Bronson Creek	Approximately 65 feet downstream of NW Anzalone Dr.	*152	*155	City of Beaverton, City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 1.0 miles upstream from NW West Union Rd.	*232	*234	
Butternut Creek	Approximately 940 feet downstream of SW 209th Ave	*160	*161	Unincorporated Areas of Washington County.
	Approximately 125 feet downstream of SW Farmington Rd.	*195	*196	
Cedar Creek	Approximately 0.5 miles downstream of SW Edy Rd	*140	*141	Town of Sherwood, Unincorporated Areas of Washington County.
	Approximately 610 feet upstream of SW Sunset Blvd	None	*172	
Cedar Mill Creek	Approximately 0.6 miles downstream of P&W Railroad Bridge.	*168	*167	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 90 feet upstream of NW 113th Ave	None	*297	
North Overflow	Approximately 640 feet downstream of SW Rita Dr	None	*203	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 250 feet upstream of SW 131st Ave	None	*209	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
South Overflow	Approximately 160 feet downstream of SW Butner Rd	None	*193	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 40 feet upstream of SW Evergreen St	None	*202	
Upper North Overflow	Approximately 120 feet downstream of confluence with Cedar Mill Creek.	None	*209	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 70 feet downstream of confluence with Cedar Mill Creek.	None	*210	
Celebrity Creek	Approximately 160 feet downstream of SW 198th Ave	None	*172	Unincorporated Areas of Washington County.
	Approximately 115 feet downstream of SW Farmington Rd.	None	*208	
Chicken Creek	Approximately 0.8 miles downstream of SW Roy Rogers Rd.	None	*131	Town of Sherwood, Unincorporated Areas of Washington County.
	Approximately 35 feet upstream of SW Edy Rd	None	*154	
West Tributary	Approximately 425 feet upstream of SW Elwert Rd	None	*149	Unincorporated Areas of Washington County.
	Approximately 0.3 miles upstream of SW Elwert Rd	None	*153	
Council Creek	Approximately 0.25 miles downstream of NW Hobbs Rd.	*151	*153	Unincorporated Areas of Washington County.
	Approximately .39 miles downstream of Beal Rd	*163	*162	
Dairy Creek	Approximately 85 feet downstream of P&W Railroad	*147	*149	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 580 feet upstream of confluence with Council Creek.	*151	*153	
Dawson Creek	Approximately 317 feet upstream NW Brookwood Ave	*147	*148	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 0.3 miles upstream of NW Shute Rd	None	*180	
Deer Creek	Approximately 475 feet downstream of NW Kahneeta Dr.	None	*172	Unincorporated Areas of Washington County.
	Approximately 90 feet upstream of NW 174th Ave	None	*199	
Erickson Creek	Approximately 211 feet upstream of SW 144th Ave	*170	*171	City of Beaverton.
	Approximately 322 feet upstream of SW 10th Street Bridge.	*198	*199	
Glencoe Swale	Approximately 980 feet upstream from confluence with McKay Creek.	*151	*153	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 0.5 miles upstream of NW Sewell Rd	None	*197	
Golf Creek	Approximately 390 feet upstream from confluence with Hall Creek.	None	*195	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 0.5 miles upstream of NW Sewell Rd	None	*219	
Gordon Creek	Approximately 275 feet upstream of SW River Rd	None	*143	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 0.25 miles upstream of SW 229th Ave	None	*193	
Hall Center Creek	Approximately 0.1 miles downstream of SW Center St	*176	*178	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 0.4 miles upstream of SW Center St	*177	*179	
Hall Creek	Approximately 175 feet downstream from confluence with Hall Center Creek.	*176	*178	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 45 feet downstream of SW 87th Ave	None	*252	
106th Trib	Approximately 235 feet downstream of SW 110th Ave	None	*188	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 600 feet downstream of SW 106th Ave	None	*242	
South Fork	Approximately 500 feet downstream of SW 96th Ave	None	*209	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 500 feet upstream of SW 86th Ave	None	*257	
Hedges Creek	Approximately 0.7 miles upstream of SW Teton Ave	None	*125	City of Tualatin, Unincorporated Areas of Washington County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 200 feet upstream of SW Tualatin Rd	None	*138	
Holcomb Creek	Approximately 500 feet upstream from confluence with Rock Creek North.	None	*175	Unincorporated Areas of Washington County.
	Approximately 0.15 miles upstream of NW Plastics Dr	None	*208	
McKay Creek	Approximately 0.15 miles upstream from confluence with Dairy Creek.	*151	*153	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 370 feet downstream of NW West Union Rd.	*171	*170	
North Johnson Creek	Approximately 200 feet downstream of SW Far Vista St.	*185	*184	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 0.15 miles upstream from confluence with North Johnson Creek—East Tributary.	None	*303	
East Tributary	Approximately 335 feet downstream of SW Taylor St	None	*246	Unincorporated Areas of Washington County.
	Approximately 0.3 miles upstream of SW Taylor St	None	*323	
North Tributary	Approximately 550 feet upstream from confluence with North Johnson Creek.	None	*218	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 0.2 miles upstream of NW 112th St	None	*340	
Rock Creek North	Approximately 0.45 miles downstream of SE River Rd	*147	*144	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 0.75 miles upstream of Old Cornelius Pass Rd.	None	*244	
Rock Creek South	Approximately 750 feet downstream of SW Pacific Highway.	*130	*131	Town of Sherwood, Unincorporated Areas of Washington County.
	Approximately .32 miles upstream of P&W Railroad	*136	*135	
South Johnson Creek	Approximately 800 feet downstream of SW Hart Rd	*195	*201	City of Beaverton, Unincorporated Areas of Washington County.
	Approximately 160 feet upstream of SW Hart Rd	None	*215	
Storey Creek	Approximately 200 feet upstream from confluence with Waible Gulch.	None	*160	Unincorporated Areas of Washington County.
	Approximately 0.80 miles upstream from confluence with Storey Creek—Middle Tributary.	None	*193	
East Tributary	Approximately 0.40 miles downstream of NW Sunset Highway.	None	*169	Unincorporated Areas of Washington County.
	Approximately 0.35 miles upstream of NW Sunset Highway.	None	*184	
Middle Tributary	Approximately 870 feet upstream from confluence with Storey Creek.	None	*177	Unincorporated Areas of Washington County.
	Approximately 70 feet upstream of NW West Union Rd.	None	*193	
Tualatin River	Approximately 1.6 miles downstream from SW Golf Course Rd.	*150	*149	City of Cornelius, City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 0.3 miles downstream from confluence with Gales Creek.	*163	*164	
	Approximately 490 feet downstream of confluence with Tualatin River-Nyberg Slough Overflow.	*121	*122	City of Durham, City of King City, City of Tigard, City of Tualatin, Unincorporated Areas of Washington County.
	Approximately 0.3 miles upstream of SW Roy Rogers Rd.	*130	*132	
Overflow to Nyberg Slough.	Approximately 150 feet upstream of SW 65th Ave	*122	*123	City of Tualatin.
	Approximately 300 feet downstream from confluence with Tualatin River.	*124	*126	
Turner Creek	Approximately 450 feet downstream of SW 32nd Ave	None	*144	City of Hillsboro.
	Approximately 0.45 miles upstream of E Main St	None	*164	
Waible Gulch	Approximately 0.25 miles upstream from confluence with McKay Creek.	None	*157	Unincorporated Areas of Washington County.
	Approximately 0.25 miles upstream from confluence with Waible Gulch—North Tributary.	None	*193	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
North Tributary	Approximately 245 feet upstream from confluence with Waible Gulch.	None	*189	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 40 feet upstream of NW West Union Rd.	None	*204	
South Tributary	Approximately 270 feet upstream from confluence with Waible Gulch.	None	*176	City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 90 feet upstream of NW Jacobson Rd	None	*208	
Willow Creek	Approximately 440 feet upstream from confluence with Beaverton Creek.	*157	*158	City of Beaverton, City of Hillsboro, Unincorporated Areas of Washington County.
	Approximately 90 feet upstream of NW 141st Pl	None	*235	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Beaverton

Maps are available for inspection at 4755 SW Griffith Dr., Beaverton, OR 97076.

City of Cornelius

Maps are available for inspection at 1355 N. Barlow Street, Cornelius, OR 97113.

City of Durham

Maps are available for inspection at 17160 SW Upper Boones Ferry Rd., Durham, OR 97224.

City of Forest Grove

Maps are available for inspection at 1924 Council Street, Forest Grove, OR 97116.

City of Hillsboro

Maps are available for inspection at 155 N. First Ave, Ste. 300, Hillsboro, OR 97124.

City of King City

Maps are available for inspection at 15300 SW 116th Ave., King City, OR 97224.

City of Tigard

Maps are available for inspection at 13125 SW Hall Blvd., Tigard, OR 97223.

City of Tualatin

Maps are available for inspection at 18880 SW Martinazzi Ave., Tualatin, OR 97062.

Town of Sherwood

Maps are available for inspection at 22560 SW Pine St., Sherwood, OR 97140.

Unincorporated Areas of Washington County

Maps are available for inspection at 155 North First Ave., Ste. 350, Hillsboro, OR 97124.

Grainger County, Tennessee, and Incorporated Areas

Lea Creek	Approximately 2,800 feet upstream U.S. Highway 11	None	+913	Unincorporated Areas of Grainger County.
	Approximately 4,200 feet upstream U.S. Highway 11	None	+913	
Norris Lake	Approximately 5,200 feet downstream of the confluence of Black Fox Creek.	None	+1032	Unincorporated Areas of Grainger County.
	Approximately 2,500 feet downstream of U.S. Highway 25.	None	+1032	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
ADDRESSES				
Unincorporated Areas of Grainger County				
Maps are available for inspection at Grainger County Courthouse, P.O. Box 126, Rutledge, TN 37861.				
McNairy County, Tennessee, and Incorporated Areas				
Bank Creek	Approximately 2,870 feet downstream of Old Stage Road.	+411	+413	Unincorporated Areas of McNairy County.
	Approximately 350 feet upstream of Stafford Bottoms Road.	None	+416	
Clarey Branch	Just upstream of U.S. Highway 64	+401	+404	Town of Adamsville, Unincorporated Areas of McNairy County.
	Approximately 750 feet upstream of State Highway 224.	None	+405	
Lick Creek	Approximately 3,700 feet downstream of Old Stage Road.	+409	+411	Unincorporated Areas of McNairy County.
	Approximately 4,840 feet upstream of State Highway 224.	None	+415	
Snake Creek	Approximately 105 feet downstream of U.S. Highway 64.	+402	+403	Town of Adamsville, Unincorporated Areas of McNairy County.
	Approximately 600 feet downstream Old Stage Road	+414	+415	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Adamsville

Maps are available for inspection at 231 East Main Street, Adamsville, TN 38310.

Unincorporated Areas of McNairy County

Maps are available for inspection at 170 West Court, Selmer, TN 38375.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 26, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23696 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7748]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 5, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7748, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Shoshone County, Idaho, and Incorporated Areas				
Pine Creek without levee	Approximately 600 feet upstream of Interstate 90 off-ramp.	None	+2208	City of Pinehurst.
	Approximately 750 feet downstream of Ohio Avenue	None	+2240	
Pine Creek without levee	Just upstream of Interstate 90 at Old ID State Route 10.	None	+2198	Unincorporated Areas of Shoshone County.
	Approximately 3,700 feet upstream of Ohio Avenue ...	None	+2277	

* National Geodetic Vertical Datum.

Depth in feet above ground.

+ North American Vertical Datum.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pinehurst

Maps are available for inspection at 106 North Division Street, Pinehurst, ID 83850.

Unincorporated Areas of Shoshone County

Maps are available for inspection at 700 Bank Street, Suite 35, Wallace, ID 83873.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Daviess County, Kentucky, and Incorporated Areas				
Gilles Ditch	Just upstream Audubon Parkway	+398	+399	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 2,600 feet upstream U.S. 60	None	+415	
Goetz Ditch	Approximately 100 feet upstream South Griffith Avenue.	None	+397	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 150 feet downstream South Griffith Avenue.	None	+397	
Horse Fork	Approximate 1,500 feet upstream Wendell Ford Expressway.	+395	+394	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 120 feet downstream of KY–54	+417	+418	
Ohio River	At the western county boundary (Approximately 11,000 feet downstream Crane Pond Slough).	+384	+383	City of Owensboro, Unincorporated Areas of Daviess County.
	At confluence with Blackford Creek	+394	+393	
Persimmon Ditch	Just upstream Ewing Road	+399	+389	City of Owensboro, Unincorporated Areas of Daviess County.
	Just downstream U.S. 60	+403	+401	
Scherm Ditch	Just upstream Lewis Lane	+398	+399	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 1,100 feet upstream South Griffith Avenue.	+399	+400	
Yellow Creek	Just upstream KY–144	+397	+392	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 520 feet upstream Wendell Ford Expressway.	None	+408	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Owensboro

Maps are available for inspection at PO Box 732, 200 East 3rd Street, Owensboro, KY 42302–0732.

Unincorporated Areas of Daviess County

Maps are available for inspection at PO Box 732, 200 East 3rd Street, Owensboro, KY 42302–0732.

Lee County, Kentucky, and Incorporated Areas				
Kentucky River—North Fork	Approximately 150 feet downstream of confluence with Mirey Creek.	None	+668	Unincorporated Areas of Lee County.
Kentucky River	Approximately 1,550 feet downstream of confluence with Blaines Branch.	None	+671	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Lee County

Maps are available for inspection at Lee County Courthouse, 256 Main Street, Beattyville, KY 41311.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Midland County, Michigan, and Incorporated Areas				
Chippewa River	Approximately 8,745 feet upstream of the confluence with Tittabawassee River.	None	+616	Township of Midland, Township of Homer.
	Approximately 18,635 feet upstream of the confluence with Tittabawassee River.	None	+616	
Sturgeon Creek	Approximately 4,200 feet upstream of Airport Road	None	+615	City of Midland, Township of Larkin.
	Approximately 4,620 feet upstream of Airport Road	None	+615	
Tittabawassee River	Approximately 5,000 feet upstream of Consumers Power Railroad.	None	+611	Township of Midland, City of Midland, Township of Homer.
	Approximately 14,080 feet upstream of the confluence of Sturgeon Creek.	None	+616	

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+ North American Vertical Datum.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Midland
Maps are available for inspection at 333 West Ellsworth Street, Midland, MI 48640.
Township of Homer
Maps are available for inspection at Homer Township Hall, 522 North Homer Road, Midland, MI 48640.
Township of Larkin
Maps are available for inspection at Larkin Township Hall, 3027 North Jefferson Road, Midland, MI 48642.
Township of Midland
Maps are available for inspection at 1030 S. Poseyville Road, Midland, MI 48640.

Ulster County, New York, and Incorporated Areas				
Rondout Creek	Approximately 500 feet downstream of the Conrail Bridge Structure.	+8	+9	City of Kingston, Town of Esopus, Town of Rosendale, Town of Ulster.
	Approximately 200 feet upstream of Lawrenceville Road (State Route 213).	+94	+91	
Saw Kill	At confluence with Esopus Creek	None	+151	Town of Kingston, Town of Ulster.
	Approximately 0.7 miles upstream of Powder Mill Road.	+260	+255	
Twaalfskill Brook	At confluence with Rondout Creek	None	+10	City of Kingston.
	Approximately 55 feet upstream of Brook Street	None	+54	

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ADDRESSES

City of Kingston
Maps are available for inspection at City of Kingston-City Hall, 420 Broadway, Kingston, NY 12401.
Town of Esopus
Maps are available for inspection at Town of Esopus-Town Hall, 172 Broadway, Port Ewen, NY 12466.
Town of Kingston
Maps are available for inspection at Town of Kingston-Town Hall, 906 Sawkill Road, Kingston, NY 12401.
Town of Rosendale
Maps are available for inspection at Town of Rosendale-Town Hall, 424 Main Street, Rosendale, NY 12742.
Town of Ulster
Maps are available for inspection at Town of Ulster-Town Hall, 1 Town Hall Drive, Lake Katrine, NY 12449.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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Caldwell County, North Carolina, and Incorporated Areas				
Beaver Creek	Approximately 400 feet downstream of the Caldwell/Wilkes County boundary.	None	+1184	Unincorporated Areas of Caldwell County.
	Approximately 1.6 miles upstream of Wilkesboro Boulevard.	None	+1252	
Blue Creek	At the confluence with Kings Creek 1 and Little Kings Creek.	None	+1102	Unincorporated Areas of Caldwell County.
	Approximately 0.5 mile upstream of Bluegrass Place (State Road 1578).	None	+1276	
Buffalo Creek	Approximately 1,500 feet upstream of the confluence with Yadkin River.	+1159	+1160	Unincorporated Areas of Caldwell County.
	At the Caldwell/Watauga County boundary	None	+2080	
Dennis Creek	At the confluence with Yadkin River	None	+1883	Unincorporated Areas of Caldwell County.
	Approximately 120 feet downstream of Richland Road (State Road 1372).	None	+2013	
Elk Branch	At the confluence with Jones Creek	None	+1385	Unincorporated Areas of Caldwell County.
	Approximately 1,290 feet upstream of Old Sampson Road (State Road 1574).	None	+1450	
Green Rock Branch	At the confluence with Buffalo Creek	None	+1216	Unincorporated Areas of Caldwell County.
	Approximately 1.5 miles upstream of Buffalo Cove Road (State Road 1504).	None	+1436	
Jackson Camp Creek	At the confluence with Yadkin River	None	+1757	Unincorporated Areas of Caldwell County.
	Approximately 1.0 mile upstream of Richland Road (State Road 1372).	None	+1867	
Jesse Fork	At the confluence with Buffalo Creek	None	+1349	Unincorporated Areas of Caldwell County.
	Approximately 0.8 mile upstream of Stone Mountain Road (State Road 1503).	None	+1640	
Jesse Fork Tributary 1	At the confluence with Jesse Fork	None	+1453	Unincorporated Areas of Caldwell County.
	Approximately 340 feet upstream of Wallace Coffey Place.	None	+1502	
Jones Creek	At the confluence with Buffalo Creek	None	+1347	Unincorporated Areas of Caldwell County.
	Approximately 1.3 miles upstream of C C Camp Road (State Road 1574).	None	+2072	
Kings Creek 1	At the confluence with Yadkin River	None	+1097	Unincorporated Areas of Caldwell County.
	At the confluence of Blue Creek and Little King Creek	None	+1102	
Kings Creek 2	At the confluence with Blue Creek	None	+1181	Unincorporated Areas of Caldwell County.
	Approximately 1.9 miles upstream of the confluence of Kings Creek 2 Tributary 1.	None	+1252	
Kings Creek 2 Tributary 1	At the confluence with Kings Creek 2	None	+1201	Unincorporated Areas of Caldwell County.
	Approximately 1.2 miles upstream of Taylor Farm Road (State Road 1702).	None	+1376	
Laytown Creek	At the confluence with Yadkin River	None	+1110	Unincorporated Areas of Caldwell County.
	Approximately 1.8 miles upstream of Laytown Road (State Road 1507).	None	+1633	
Little Kings Creek	At the confluence with Blue Creek and Kings Creek 1	None	+1102	Unincorporated Areas of Caldwell County.
	Approximately 1,630 feet upstream of Zacks Fork Road (State Road 1511).	None	+1334	
Mill Creek (into Yadkin River)	At the confluence with Yadkin River	None	+1154	Unincorporated Areas of Caldwell County.
	Approximately 1.2 miles upstream of NC 268 Highway.	None	+1216	
Old Field Branch	At the confluence with Buffalo Creek	None	+1379	Unincorporated Areas of Caldwell County.
	Approximately 1.7 miles upstream of Cottrell Place	None	+1548	
Ooten Creek	At the confluence with Yadkin River	None	+1940	Unincorporated Areas of Caldwell County.

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	Approximately 0.6 mile upstream of the confluence with Yadkin River.	None	+2122	
Preston Creek	At the confluence with Yadkin River	None	+1332	Unincorporated Areas of Caldwell County.
	Approximately 650 feet upstream of Kirby Mountain Road (State Road 1370).	None	+1548	
Rockhouse Creek	At the confluence with Buffalo Creek	None	+1670	Unincorporated Areas of Caldwell County.
	Approximately 1.3 miles upstream of the confluence with Buffalo Creek.	None	+1900	
Warrior Creek	Approximately 300 feet upstream of the confluence with Yadkin River.	+1213	+1214	Unincorporated Areas of Caldwell County.
	Approximately 210 feet upstream of Warrior Road (State Road 1346).	None	+1251	
Yadkin River	At the Caldwell/Wilkes County boundary	None	+1090	Unincorporated Areas of Caldwell County.
	Approximately 2.2 miles upstream of the confluence of Ooten Creek.	None	+2315	
Tributary 25	At the confluence with Yadkin River	None	+1128	Unincorporated Areas of Caldwell County.
	Approximately 1,730 feet downstream of Laytown Road (State Road 1507).	None	+1284	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Caldwell County

Maps are available for inspection at Caldwell County Courthouse, 1051 Harper Avenue, Lenoir, NC.

Clatsop County, Oregon, and Incorporated Areas

Beerman Creek	Approximately at US 101	None	+21	Unincorporated Areas of Clatsop County.
	Approximately 0.95 miles upstream of Beerman Creek Lane.	None	+119	
Neawanna Creek	Approximately 50 feet downstream of 12th Avenue	+16	+14	City of Seaside, Unincorporated Areas of Clatsop County.
	Approximately 0.7 miles upstream of Avenue	None	+19	
Necanicum River	Approximately 450 feet downstream of 12th Avenue	+15	+14	City of Seaside, Unincorporated Areas of Clatsop County.
	Approximately at the Howard Johnson Bridge	+38	+39	
Necanicum River Overflow	Approximately 0.24 miles upstream of confluence with Necanicum River.	None	+32	City of Seaside, Unincorporated Areas of Clatsop County.
	Approximately 0.7 miles upstream of confluence with Necanicum River.	None	+37	
Upper Neawanna Creek	Approximately 260 feet downstream of Wahanna Road.	None	+16	City of Seaside, Unincorporated Areas of Clatsop County.
	Approximately 840 feet upstream of Wahanna Road	None	+31	

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ADDRESSES

City of Seaside

Maps are available for inspection at 989 Broadway, Seaside, OR.

Unincorporated Areas of Clatsop County

Maps are available for inspection at 800 Exchange Street, Ste. 310, Astoria, OR.

Lawrence County, Tennessee, and Incorporated Areas

Buffalo River	Appoximately 1,028 feet upstream of confluence of Saw Creek.	None	+792	Unincorporated Areas of Lawrence County.
	Approximately 2,040 feet upstream of State Highway 240.	None	+812	
Shoal Creek	At New Shoal Creek Dam	None	+759	Unincorporated Areas of Lawrence County.
	Approximately 8,540 feet downstream of Old Waynesboro Highway.	None	+787	

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ADDRESSES

Unincorporated Areas of Lawrence County

Maps are available for inspection at 240 West Gaines Street, Lawrenceburg, TN 38464.

Canutillo—Flow Path 42	Confluence with the Rio Grande	None	+3772	Unincorporated Areas of El Paso County, City of El Paso.
	Interstate 10	+3901	+3895	
Canutillo—Flow Path 42A	Confluence with the Flow Path 42	None	+3873	City of El Paso, Unincorporated Areas of El Paso County.
	Interstate 10	None	+3916	
Government Hills Channel—Flow Path 24.	Approximately 400 feet downstream from La Luz Avenue.	+3741	+3737	City of El Paso.
	Approximately 770 feet upstream from intersection with Leeds Avenue.	+3794	+3799	
McKelligon County Arroyo—Flow Path 17.	Confluence with McKelligon Canyon Arroyo	+4630	+4638	Unincorporated Areas of El Paso County.
Tributary 6	Approximately 2400 feet upstream of confluence with McKelligon Canyon Arroyo.	+4775	+4781	
McKelligon County Arroyo—Flow Path 17.	At the intersection with Davis Seamon Road	+4262	+4263	City of El Paso, Unincorporated Areas of El Paso County.
	Approximately 2,000 feet upstream of confluence with McKelligon Canyon Arroyo Tributary 6.	+4772	+4765	
NE Pond—Pond 2	Northern most pond, intersected by Tiger Eye Drive	None	+3923	City of El Paso.
NE Pond—Pond 3	Square pond along west central side of ponding area, across Dyer St. from Ameen Drive.	None	+3909	City of El Paso.
NE Pond—Pond 4	Small pond North of Pond 4	None	+3913	City of El Paso.
NE Pond—Pond 5	Small pond in Southwest corner of ponding area	None	+3909	City of El Paso.
NE Pond—Pond 6	Small pond in Southeast corner of ponding area	None	+3909	City of El Paso.
Range Dam Flow Path 14—El Paso Drainage Channel #2.	Intersection with Hollyhock Drive	+3943	+3945	City of El Paso.
	Blythe Street	+3976	+3975	
Range Dam Flow Path 16—Main Channel.	Approximately 600 feet downstream from the Railroad	None	+3869	City of El Paso.
	Donald Drive	None	+3960	
Range Dam—Outlet Channel	Confluence with Flow Path No. 16	None	+3887	City of El Paso.
	Approximately 1,400 feet upstream of Dyer Street at Range Dam.	None	+3899	
San Felipe Arroyo	Approximately 600 feet downstream from Alameda Avenue.	None	+3608	Unincorporated Areas of El Paso County.

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	Approximately 5,000 feet upstream of Citizen Transfer Station Road.	None	+3693	
Stream 2—Horizon Arroyo	Approximately 3,500 feet downstream from I–10 Frontage Road.	+3666	+3657	Unincorporated Areas of El Paso County.
	Approximately 65 feet downstream from I–10 Frontage Road.	+3752	+3747	
Vinton 1 & 2—Flow Path 45	Approximately 160 feet upstream of the confluence with the Rio Grande.	None	+3775	Town of Vinton, City of El Paso, Unincorporated Areas of El Paso County.
	Approximately 7,900 feet upstream of the confluence with Flow Path 45B.	+4500	+4514	
Vinton 1 & 2—Flow Path 45 C.	Confluence with Flow Path No. 45	+4017	+4048	City of El Paso, Unincorporated Areas of El Paso County.
	Approximately 2,300 feet upstream of confluence with Flow Path 45 Tributary.	None	+4656	
Vinton 1 & 2—Flow Path 45 C.	Confluence with Flow Path No. 45 C	None	+4531	Unincorporated Areas of El Paso County.
Tributary 1	Approximately 1,500 feet upstream of confluence with Flow Path 45 C.	None	+4598	
Vinton 1 & 2—Flow Path 45A	Confluence with Flow Path 45	None	+3815	Town of Vinton, City of El Paso, Unincorporated Areas of El Paso County.
	Approximately 150 feet upstream of Remington Drive	None	+4058	
Vinton 1 & 2—Flow Path 45B	Confluence with Flow Path No. 45	+4250	+4242	Unincorporated Areas of El Paso County, City of El Paso.
	Approximately 8,900 feet upstream of confluence with Flow Path No. 45.	None	+4598	
Vinton 1 & 2—Flow Path 45D	Confluence with Flow Path No. 45	None	+4266	City of El Paso, Unincorporated Areas of El Paso County.
	Approximately 6,300 feet upstream of confluence with Flow Path No. 45B.	None	+4513	

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ADDRESSES

City of El Paso
Maps are available for inspection at City Hall/Engineering Department, #2 Civic Center Plaza, El Paso, TX 79901.

Town of Vinton
Maps are available for inspection at 436 Vinton Road, Anthony, TX 79821.

Unincorporated Areas of El Paso County
Maps are available for inspection at 500 East San Antonio St., Room 407, El Paso, TX 79901.

King County, Washington, and Incorporated Areas

Cedar River	Approximately at 149th Avenue SE	+100	+101	Unincorporated Areas of King County, City of Renton.
	Approximately 350 feet upstream of Landsburg Road SE.	None	+528	
Green River	Approximately at Fort Dent Park Road	+25	+24	Unincorporated Areas of King County, City of Auburn, City of Kent, City of Renton, City of Seatac, City of Tukwila.
	Approximately 0.48 miles downstream of SR 18	+75	+74	
Patterson Creek	Approximately 600 feet upstream of SR 202, near confluence with Snoqualmie R.	None	+86	Unincorporated Areas of King County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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	Approximately .31 miles upstream of SR 202 past Patternson Creek Overflow.	None	+160	
Snoqualmie River	Approximately at the King County/Snohomish County boundary.	+47	+50	Unincorporated Areas of King County, City of Carnation, City of Snoqualmie, Town of Duvall.
	Approximately 0.5 miles downstream from Snoqualmie Dam.	+128	+125	
Springbrook Creek	Approximately 0.44 miles downstream of SW 7th Street Bridge.	None	+24	Unincorporated Areas of King County, City of Renton, City of Tukwila.
	Approximately 250 feet downstream of the City of Renton/City of Kent boundary.	+22	+30	

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ADDRESSES

City of Auburn
Maps are available for inspection at 25 W. Main Street, Auburn, WA 98001.

City of Carnation
Maps are available for inspection at 4621 Tolt Avenue, Carnation, WA 98014.

City of Kent
Maps are available for inspection at 220 Fourth Avenue South, Kent, WA 98032.

City of Renton
Maps are available for inspection at 1055 S Grady Way, Renton, WA 98055.

City of Seatac
Maps are available for inspection at 4800 S 188th St, Seatac, WA 98188.

City of Snoqualmie
Maps are available for inspection at 8020 Railroad Ave SE, Snoqualmie, WA 98065.

City of Tukwila
Maps are available for inspection at 8020 Railroad Ave SE, Tukwila, WA 98118.

Town of Duvall
Maps are available for inspection at 15535 Main St NE, Duvall, WA 98019.

Unincorporated Areas of King County
Maps are available for inspection at 201 S. Jackson Street, Ste 600, Seattle, WA 98104.

Pierce County, Washington, and Incorporated Areas

Artondale Creek (main stem)	Approximately 100 feet upstream of Wollochet Drive Culvert.	None	+13	Unincorporated Areas of Pierce County.
	Approximately 200 feet downstream of confluence with East and West Branch.	None	+39	
Artondale Creek—East Branch.	Approximately 320 feet upstream of confluence with main stem Artondale Creek.	None	+40	Unincorporated Areas of Pierce County.
	Approximately 80 feet downstream of Hunt Street NW	None	+152	
Artondale Creek—West Branch.	Approximately 460 feet upstream of confluence with main stem Artondale Creek.	None	+39	Unincorporated Areas of Pierce County.
	Approximately 0.46 miles upstream of confluence with main stem Artondale Creek.	None	+48	
Canyon Creek	Approximately 250 feet downstream of 128th Street E	None	+31	Unincorporated Areas of Pierce County.
	Approximately 130 feet upstream of 72nd Street	None	+280	
Carbon River	Approximately 860 feet upstream of confluence with Puyallup R.	+130	+124	Unincorporated Areas of Pierce County, Town of Orting.
	Approximately 660 feet upstream of Alward Road	None	+456	
Clarks Creek	Approximately at River Road	None	+29	Unincorporated Areas of Pierce County, City of Puyallup.
	Approximately 600 feet upstream of 12th Avenue SW	+31	+34	

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Clarks Creek—Meeker Ditch	Approximately 680 feet downstream of 14th Street SW.	None	+31	Unincorporated Areas of Pierce County, City of Puyallup.
	Approximately 580 feet upstream of 7th Street SW	None	+38	
Clover Creek	Approximately 240 feet upstream of confluence with Steilacoom Lake.	+215	+214	Unincorporated Areas of Pierce County, City of Lakewood.
	Approximately 0.86 miles upstream of Canyon Road	None	+343	
Crescent Creek	Approximately 45 feet upstream of 96th Street E	None	+14	Unincorporated Areas of Pierce County, Town of Gig Harbor.
	Approximately 880 feet upstream of 138th Street E	None	+172	
Fennel Creek	Approximately 660 feet upstream of confluence with Puyallup River.	None	+101	Unincorporated Areas of Pierce County, City of Bonney Lake.
	Approximately at Kelley Lake Road Bridge	None	+505	
Lacamas Creek	Approximately 920 feet downstream of SR507	+326	+328	Town of Roy, Unincorporated Areas of Pierce County.
	Approximately at 0.26 miles upstream of 310th Street S (Farm Road).	+473	+474	
Mashel River	Approximately at Private Road, 1600 feet upstream of confluence with Little Mashel River.	+739	+738	Town of Eatonville, Unincorporated Areas of Pierce County.
	Approximately at 0.42 miles upstream of Eatonville Cutoff Road.	+862	+866	
Morey Creek	Approximately 180 feet from confluence with Clover Creek.	None	+293	Unincorporated Areas of Pierce County.
	Approximately at 140 feet upstream of Spannaway Loop Road.	None	+300	
Muck Creek	Approximately 1070 feet upstream of 276th Street Bridge.	+442	+444	Unincorporated Areas of Pierce County.
	Approximately at 240 feet upstream of 228th Street Ct E.	None	+484	
North Fork Clover Creek	Approximately at Golden Givens Road	+317	+319	Unincorporated Areas of Pierce County, City of Lakewood, City of Tacoma.
	Approximately 1500 feet upstream of 96th Street E	None	+391	
North Fork Clover Creek Tributary #1.	Approximately 3220 feet upstream of confluence with North Fork Clover Creek.	+323	+322	Unincorporated Areas of Pierce County.
	Approximately 0.4 miles upstream of 40th Avenue E ..	None	+457	
North Fork Clover Creek Tributary #2.	Approximately 0.73 miles downstream of Railroad culvert.	None	+333	Unincorporated Areas of Pierce County.
	Approximately 40 feet upstream of Railroad culvert	None	+397	
North Fork Clover Creek Tributary #4.	Approximately 0.5 miles downstream of 22nd Avenue Ct E.	None	+363	Unincorporated Areas of Pierce County.
	Approximately 0.2 miles upstream of 22nd Avenue Ct E.	None	+402	
North Fork Clover Creek Tributary #5.	Approximately 40 feet upstream of Aqueduct Drive E	None	+368	Unincorporated Areas of Pierce County.
	Approximately 0.25 miles upstream of Aqueduct Drive E.	None	+368	
Puyallup River	Approximately 1100 feet downstream of East 11th Street.	+13	+10	City of Fife, City of Puyallup, City of Sumner, Town of Orting, Unincorporated Areas of Pierce County.
	Approximately at 0.53 miles upstream of BN Railroad/ Champion Bridge.	+606	+604	
South Prairie Creek	Approximately 1 mile downstream of State Hwy 162 ..	+301	+302	Town of South Prairie, Unincorporated Areas of Pierce County.
	Approximately 0.37 miles upstream of SR 162 Bridge	+449	+458	
Spanaway Creek	Approximately 75 feet upstream of Spanaway Loop Road S.	+287	+285	Unincorporated Areas of Pierce County.
	Approximately 500 feet upstream of 138th Avenue S	+296	+297	

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Swan Creek	Approximately 110 feet upstream of 64th Street E	None	+323	Unincorporated Areas of Pierce County, City of Tacoma.
	Approximately 330 feet upstream of 12th Street E	None	+419	
Wapato Creek I	Approximately 1860 feet downstream of 12th Street E	None	+12	City of Edgewood, City of Fife, City of Puyallup, City of Tacoma, Unincorporated Areas of Pierce County.
	Approximately at 130 feet upstream of 7th Street NW	None	+40	
Wapato Creek II	Approximately at 1975 feet upstream of 114th Avenue Ct E.	None	+40	City of Edgewood, City of Puyallup, Unincorporated Areas of Pierce County.
	Approximately 1400 feet downstream of Todd Road NE (furthest downstream crossing).	+43	+49	
White River	Approximately 380 feet downstream of State Highway 410.	+47	+51	City of Sumner, City of Puyallup, Unincorporated Areas of Pierce County.
	Approximately at 0.4 miles upstream of 8th Street E	None	+74	

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ADDRESSES

City of Bonney Lake
Maps are available for inspection at 19306 Bonney Lake Blvd, Bonney Lake, WA 98390.

City of Edgewood
Maps are available for inspection at 2221 Meridian East, Edgewood, WA 98371.

City of Fife
Maps are available for inspection at 5411 23rd St E, Fife, WA 98424.

City of Lakewood
Maps are available for inspection at 6000 Main St SW, Lakewood, WA 98499.

City of Puyallup
Maps are available for inspection at 330 3rd St SW, Puyallup, WA 98371.

City of Sumner
Maps are available for inspection at 1104 Maple St, Sumner, WA 98390.

City of Tacoma
Maps are available for inspection at 747 Market St, Ste. 1200, Tacoma, WA 98402.

Town of Eatonville
Maps are available for inspection at 201 Center St W, Eatonville, WA 98328.

Town of Gig Harbor
Maps are available for inspection at 3510 Grandview St, Gig Harbor, WA 98335.

Town of Orting
Maps are available for inspection at 110 Train St SE, Orting, WA 98360.

Town of Roy
Maps are available for inspection at 216 McNaught St S, Roy, WA 98580.

Town of South Prairie
Maps are available for inspection at 121 NW Washington St., South Prairie, WA 98385.

Unincorporated Areas of Pierce County
Maps are available for inspection at 930 Tacoma Avenue S., Rm 737, Tacoma, WA 98402.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 28, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23702 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7752]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 5, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7752, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Marin County, California, and Incorporated Areas				
Black John Slough (back-water from San Pablo Bay).	Approximately 2,000 feet northwest of the intersection of Topaz Drive and Albatross Drive.	None	+9	City of Novato.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Corte Madera Creek	Approximately 250 feet north of the intersection of U.S. Highway 101 and Nellen Drive.	None	+9	Unincorporated Areas of Marin County.
	Approximately 100 feet east of the intersection of Greenbrae Boardwalk and Northwestern Pacific Railroad.	None	+9	
(backwater from San Francisco Bay).	At the intersection of Birch Avenue and Apache Road (at Lagoon 2).	None	+9	Town of Corte Madera.
(backwater from San Francisco Bay).	Approximately 66 feet west of the intersection of Bon Air Road and Eliseo Drive.	None	+9	Unincorporated Areas of Marin County.
Coyote Creek	Approximately 800 feet northwest of the intersection of U.S. Highway 101 and Shoreline Highway.	None	+9	Unincorporated Areas of Marin County.
Gallinas Creek	At the intersection of Main Drive and Smith Ranch Road.	None	+9	City of San Rafael.
Miller Creek	Upstream side of downstream crossing of Lucas Valley Road.	None	+75	City of San Rafael.
	Approximately 200 feet downstream of upstream crossing of Lucas Valley Road.	None	+111	
Richardson Bay	Approximately 200 feet west of the intersection of San Rafael Avenue and Lagoon Road.	+8	+9	City of Belvedere.
	Approximately 2,000 feet northeast of the intersection of Johnson Street and Bridgeway.	None	+9	Unincorporated Areas of Marin County.
San Anselmo Creek	Approximately 700 feet downstream of Meadow Way	None	+150	Unincorporated Areas of Marin County.
	Approximately 1,700 feet downstream of Meadow Way.	None	+155	
(backwater from San Pablo Bay).	Approximately 1,000 feet south of the San Antonio Creek and Mud Slough confluence.	None	+8	Unincorporated Areas of Marin County.
San Francisco Bay	Approximately 1,000 feet east of the intersection of Eden Lane and Paradise Drive.	None	+9	Unincorporated Areas of Marin County.
San Pablo Bay	Approximately 1,500 feet south of the intersection of Las Lomas Drive and Casa Grande Real.	+8	+9	Unincorporated Areas of Marin County.
San Rafael Canal (backwater from San Rafael Bay).	Approximately 240 feet southeast of the intersection of Point San Pedro Road and Harbor View Court.	None	+9	Unincorporated Areas of Marin County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Belvedere

Maps are available for inspection at Belvedere City Hall, 450 San Rafael Avenue, Belvedere, CA.

City of Novato

Maps are available for inspection at City of Novato Public Works Department, 75 Rowland Way, Suite 200, Novato, CA.

City of San Rafael

Maps are available for inspection at City of San Rafael Public Works Department, 111 Morphew Street, San Rafael, CA.

Town of Corte Madera

Maps are available for inspection at Town of Corte Madera Public Works Department, 233 Tamalpais Drive, Suite 200, Corte Madera, CA.

Unincorporated Areas of Marin County

Maps are available for inspection at Marin County Public Works Department, Land Development Section, 3501 Civic Center Drive, San Rafael, CA.

Chatham County, Georgia, and Incorporated Areas				
Black Creek	Just upstream of Interstate Highway 95/State Highway 405.	+12	+13	City of Port Wentworth.
	At Norfolk Southern Railway	None	+16	
Tributary No. 2	At the confluence with Black Creek	+12	+13	City of Port Wentworth.
	Approximately 2,990 feet upstream of Saussy Road ..	+12	+15	
Chippewa Canal	Approximately 250 feet downstream of East Montgomery Cross Road.	+11	+12	City of Savannah.
	Approximately 1,010 feet upstream of Mall Boulevard	None	+18	
Coffee Bluff Ponding Area	Entire Shoreline	None	+14	City of Savannah.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Colonial Oaks Canal	Just upstream of Stillwood Drive	None	+11	City of Savannah.
	At Windsor Road	None	+15	
Tributary No. 1	At the confluence with Colonial Oaks Canal	None	+11	City of Savannah.
	Approximately 640 feet upstream of Rockingham Road.	None	+16	
Tributary No. 1.1	At the confluence with Colonial Oaks Canal Tributary No. 1.	None	+14	City of Savannah.
	Approximately 310 feet upstream of Stillwood Drive	None	+17	
Dundee Canal	Approximately 2,330 feet downstream of Chatham Parkway.	+14	+11	Unincorporated Areas of Chatham County, City of Garden City, City of Savannah.
	Approximately 3,690 feet upstream of Chatham Parkway.	+14	+11	
Hardin Canal	Just upstream of Pine Barren Road	+12	+13	Town of Pooler, City of Bloomingdale.
	At CSX Railroad (3rd crossing)	None	+19	
Harmon Canal	Just upstream of Edgewater Road	+11	+12	City of Savannah.
	Approximately 570 feet upstream of Montgomery Cross Road.	None	+18	
Kingsway Canal	Just upstream of Whitfield Avenue/State Highway 204 Spur.	None	+11	Unincorporated Areas of Chatham County.
	Approximately 1,170 feet upstream of Kings Way	None	+14	
Little Ogeechee River Tributary.	At Little Neck Road	None	+13	Unincorporated Areas of Chatham County.
	Approximately 3,120 feet upstream of Middle Landing Road.	None	+18	
Louis Mills Branch	At the confluence with South Springfield Canal	+11	+12	Unincorporated Areas of Chatham County.
	Approximately 1,980 feet upstream of Marshall Avenue.	None	+19	
Pipe Makers Canal	Approximately 1,000 feet upstream of Norfolk Southern Railway (1st crossing).	+12	+11	Unincorporated Areas of Chatham County, City of Bloomingdale, City of Garden City, City of Savannah, Town of Pooler.
	Just downstream of U.S. Highway 80/State Highway 17/26.	+20	+21	
Tributary No. 2	At the confluence with Pipe Makers Canal	+18	+20	Unincorporated Areas of Chatham County, City of Bloomingdale, Town of Pooler.
	Approximately 500 feet downstream of Conaway Road.	+19	+20	
St. Augustine Creek Tributary	Approximately 6,180 feet downstream of Jimmy DeLoach Parkway.	+18	+19	City of Bloomingdale, Unincorporated Areas of Chatham County.
	Approximately 4,820 feet upstream of Jimmy DeLoach Parkway.	+19	+20	
Tributary to Little Ogeechee River Tributary.	At confluence with Little Ogeechee River Tributary	None	+15	Unincorporated Areas of Chatham County
	Approximately 3,300 feet upstream of Middle Landing Road.	None	+19	
Windsor Forest Canal East	Approximately 330 feet upstream of Stillwood Drive	None	+11	City of Savannah.
	Approximately 710 feet upstream of Deerfield Road	None	+15	
Tributary	At the confluence with Windsor Forest Canal West	None	+16	City of Savannah.
	Approximately 2,980 feet upstream of confluence with Windsor Forest Canal West.	None	+17	
Tributary No. 2	At the confluence with Windsor Forest Canal East	None	+13	City of Savannah.
	Approximately 390 feet upstream of Largo Drive	None	+17	
Tributary No. 3	At the confluence with Windsor Forest Canal East and Colonial Oaks Canal.	None	+15	City of Savannah.
	Approximately 410 feet upstream of Windsor Road	None	+15	
Canal West	Approximately 250 feet upstream of Thorny Bush Road.	None	+11	City of Savannah.
	Approximately 3,410 feet upstream of Roger Warlick Drive.	None	+19	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Bloomingdale

Maps are available for inspection at #8 West U.S. Highway 80, Bloomingdale, GA 31302.

City of Garden City

Maps are available for inspection at 100 Main Street, Garden City, GA 31408.

City of Port Wentworth

Maps are available for inspection at 305 South Coastal Highway, Port Wentworth, GA 31407.

City of Savannah

Maps are available for inspection at 2 East Bay Street, P.O. Box 1027, Savannah, GA 31401.

Town of Pooler

Maps are available for inspection at 100 Southwest Highway 80, Pooler, GA 31322.

Unincorporated Areas of Chatham County

Maps are available for inspection at 124 Bull Street, Suite 200, Savannah, GA 31401.

Chattooga County, Georgia, and Incorporated Areas

Armuchee Creek	Approximately 350 feet downstream of county boundary.	None	+635	Unincorporated Areas of Chattooga County.
	Approximately 1,250 feet upstream of county boundary.	None	+636	
Chattooga River	Approximately 1,140 feet downstream of U.S. Highway 27/State Highway 1.	None	+656	Unincorporated Areas of Chattooga County, Town of Trion.
	Approximately 365 feet downstream of U.S. Highway 27/State Highway 1.	None	+657	
Little Armuchee Creek	Approximately 920 feet downstream of county boundary.	None	+636	Unincorporated Areas of Chattooga County.
	At county boundary	None	+636	

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+ North American Vertical Datum.
# Depth in feet above ground.

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ADDRESSES

Town of Trion

Maps are available for inspection at 1220 Pine Street, Trion, GA 30753.

Unincorporated Areas of Chattooga County

Maps are available for inspection at 120 Cox Street, Summerville, GA 30747–1398.

Crawford County, Georgia, and Incorporated Areas

Echeconnee Creek	At the Crawford/Bibb/Peach County Boundary	None	+288	Unincorporated Areas of Crawford County.
	Just upstream of Boy Scout Road	None	+308	

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+ North American Vertical Datum.
*# Depth in feet above ground.

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Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

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ADDRESSES

Unincorporated Areas of Crawford County

Maps are available for inspection at 1011 Highway 341 North, Roberta, GA 31078.

Fayette County, Georgia, and Incorporated Areas

Tar Creek	Approximately 135 feet downstream of Lees Mill Road.	+846	+847	Unincorporated Areas of Fayette County.
	At confluence with Whitewater Creek	+846	+847	

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+ North American Vertical Datum.

Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Fayette County

Maps are available for inspection at Stonewall Administration Complex, 140 Stonewall Avenue West, Suite 100, Fayetteville, GA 30214.

Liberty County, Georgia, and Incorporated Areas

Jerico River	Approximately 6,650 feet downstream of CSX railroad	None	+10	Unincorporated Areas of Liberty County.
	At CSX railroad	None	+10	
Mill Creek	Approximately 3,830 feet upstream of Fort Stewart Railway.	None	+71	Unincorporated Areas of Liberty County.
	Approximately 4,570 feet upstream of the confluence of Mill Creek Tributary No. 2.	None	+76	

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+ North American Vertical Datum.

Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Liberty County

Maps are available for inspection at Liberty County Courthouse Annex, Room 105, 12 North Main Street, Hinesville, GA 31313.

Kane County, Illinois, and Incorporated Areas

Aurora Chain of Lakes (previously Blackberry Creek Tributary H).	1,000 feet downstream of Prairie Street	+667	+666	City of Aurora, Unincorporated Areas of Kane County.
	Downstream of Indian Trail Road.	None	+683	
Cherry Hills Diversion (previously Blackberry Creek Tributary H).	Confluence with Aurora Chain of Lakes	+670	+667	City of Aurora.
	Confluence with overflow from East Run	+673	+670	
Blackberry Creek	300 feet upstream of county boundary	+661	+660	Unincorporated Areas of Kane County, City of Aurora, Village of Elburn, Village of Montgomery, Village of Sugar Grove.
	1200 feet upstream of State Route 38	None	+848	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
East Run (Previously Blackberry Creek Tributary A).	500 feet upstream of Indian Trail Road	+674	+675	Unincorporated Areas of Kane County, City of Aurora, Village of North Aurora.
	245 feet upstream of Oak Street Culvert	None	+701	
North Branch	Confluence with East Run	None	+683	Unincorporated Areas of Kane County, Village of North Aurora.
	Confluence with overflow from East Run	None	+686	
North Loop	Confluence with East Run	None	+676	Unincorporated Areas of Kane County, City of Aurora, Village of North Aurora.
	Divergence from East Run	None	+683	
Elburn Run (Previously Blackberry Creek Tributary D).	Confluence at Blackberry Creek	+740	+739	Unincorporated Areas of Kane County, Village of Elburn.
	200 feet upstream of BCNW Railroad	None	+834	
Indian Creek	Confluence with Fox River	+636	+635	Unincorporated Areas of Kane County, City of Aurora, City of Batavia.
	FERMI Lab Berm	None	+737	
Tributary B	Confluence with Indian Creek	+709	+708	Unincorporated Areas of Kane County, City of Aurora.
	Approx. 850 feet upstream of Loreen Drive	None	+716	
Jelkes Creek	Immediately upstream of the unnamed road downstream of Route 31.	+716	+717	Village of West Dundee, Village of Sleepy Hollow.
	At Sleepy Hollow Road	+769	+773	
Lake Run (Previously Blackberry Creek Tributary B).	Confluence at Blackberry Creek	+678	+677	Unincorporated Areas of Kane County, Village of North Aurora, Village of Sugar Grove.
	125 feet upstream of Hughes Road	None	+785	
Main Street Branch (Previously Main Street Ditch).	Confluence with Lake Run	+707	+706	Unincorporated Areas of Kane County.
	Approx. 2875 feet upstream of Main Street.	>None	+709	
Nelson Lake Branch (Previously Blackberry Creek Tributary B).	Confluence with Lake Run	+698	+695	Unincorporated Areas of Kane County.
	At the inlet to Nelson Lake, just downstream of the unnamed road.	None	+696	
North of I–88 Overflow	Confluence with Lake Run	None	+684	Unincorporated Areas of Kane County, City of Aurora, Village of North Aurora.
	Confluence with Overflow from Lake Run	None	+686	
North of I–88 Overflow East Branch.	Confluence with Lake Run North of I88 Overflow	None	+685	Unincorporated Areas of Kane County, City of Aurora.
	Approx. 1,850 feet upstream of confluence with Lake Run North of I–88 Overflow.	None	+685	
South I–88 Diversion	Confluence with Lake Run	None	+680	Unincorporated Areas of Kane County.
	Immediately downstream of East-West Tollway	None	+682	
Prestbury Branch (previously Blackberry Creek Tributary E).	Confluence with Blackberry Creek	+680	+678	Unincorporated Areas of Kane County, Village of Sugar Grove.
	Immediately downstream of Denny Road	None	+688	
Route 38 Branch	Confluence with Blackberry Creek	None	+831	Unincorporated Areas of Kane County.
	2,550 feet upstream of Route 38 and 175′ east of Bowgren Circle.	None	+850	
Seavey Road Run (previously Blackberry Creek Tributary C).	150 feet upstream of State Route 47	+710	+709	Unincorporated Areas of Kane County.
	Approx. 1,050 feet upstream of Main Street	None	+769	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Green Road Branch	Confluence with Seavey Road Run	None	+726	Unincorporated Areas of Kane County.
	125 feet upstream of Green Road	None	+735	
Main Street Branch	Confluence with Seavey Road Run	None	+721	Unincorporated Areas of Kane County.
	Approx. 150 feet upstream of Main Street	None	+750	
Selmarten Creek	Immediately upstream of Thompson Lane	+716	+715	City of Aurora, Unincorporated Areas of Kane County.
	County Boundary	+719	+718	
Sleepy Creek	600 feet downstream of Strom Ave. culvert outlet	+718	+719	Village of West Dundee, Village of Sleepy Hollow.
	Immediately upstream of Hillcrest Road	+749	+748	
South Tributary	Confluence with Indian Creek	+684	+685	Unincorporated Areas of Kane County.
	County Boundary	None	+703	
Tollway Tributary	Confluence with Indian Creek	None	+710	Unincorporated Areas of Kane County.
	Approx. 700 feet upstream of Molitor Road	None	+714	

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# Depth in feet above ground.
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ADDRESSES

City of Aurora

Maps are available for inspection at Aurora City Planning Department, Aurora City Hall, 44 East Downer Place, Aurora, IL 60507.

City of Batavia

Maps are available for inspection at City of Batavia Engineering Department, 100 North Island Avenue, Batavia, IL 60510.

Unincorporated Areas of Kane County

Maps are available for inspection at Kane County Government Center Bldg., Water Resources Dept., 719 Batavia Avenue, Geneva, IL 60134.

Village of Elburn

Maps are available for inspection at Elburn Village Hall, 301 East North Street, Elburn, IL 60119.

Village of Montgomery

Maps are available for inspection at Montgomery Village Hall, 1300 South Broadway, Montgomery, IL 60538.

Village of North Aurora

Maps are available for inspection at North Aurora Village Hall, 25 E. State Street, North Aurora, IL 60542.

Village of Sleepy Hollow

Maps are available for inspection at Sleepy Hollow Village Hall, One Thorobred Lane, Sleepy Hollow, IL 60118.

Village of Sugar Grove

Maps are available for inspection at Sugar Grove Village Hall, 10 Municipal Drive, Sugar Grove, IL 60554.

Village of West Dundee

Maps are available for inspection at West Dundee Public Safety Center, 555 South Eighth Street, West Dundee, IL 60118.

Hendricks County, Indiana, and Incorporated Areas

Abner Creek	At the confluence with White Lick Creek	+750	+751	Unincorporated Areas of Hendricks County.
	Approximately 800 feet downstream of South County Road 525 East.	+750	+751	
Clarks Creek	At the confluence with White Lick Creek	+691	+693	Unincorporated Areas of Hendricks County.
	Approximately 1,450 feet upstream of South Center Street.	+693	+694	
Cosner Branch	At the confluence with West Fork White Lick Creek	+749	+748	Unincorporated Areas of Hendricks County.
	Approximately 600 feet upstream of the confluence with West Fork White Lick Creek.	+749	+750	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Hughes Branch	Approximately 680 feet upstream of the confluence with Little West Fork White Lick Creek.	+867	+866	Unincorporated Areas of Hendricks County.
	Approximately 4,570 feet upstream of County road 651 North.	None	+936	
Keeney Ditch	At the confluence with Little West Fork White Lick Creek.	+927	+931	Unincorporated Areas of Hendricks County.
	Approximately 4,580 feet upstream of North County Road 275 East.	None	+943	
Little West Fork White Lick Creek.	At the confluence with White Lick Creek	+850	+848	Unincorporated Areas of Hendricks County, Town of Brownsburg, Town of Pittsboro.
	Approximately 3,385 feet upstream of East County Road 1000 North.	None	+941	
Ross Ditch	Approximately 740 feet downstream of North County Road 200 West.	None	+929	Unincorporated Areas of Hendricks County, Town of Lizton.
	Approximately 3,985 feet upstream of North County Road 150 East.	None	+949	
Thompson Creek	Approximately 140 feet upstream of the confluence with West Fork White Lick Creek.	+862	+863	Unincorporated Areas of Hendricks County.
	Approximately 550 feet upstream of the confluence with West Fork White Lick Creek.	+863	+864	
West Fork White Lick Creek	At the confluence with White Lick Creek	+681	+677	Unincorporated Areas of Hendricks County.
	Approximately 2,100 feet upstream of the confluence with White Lick Creek.	+681	+680	
Tributary No. 1	Approximately 300 feet upstream of the confluence with West Fork White Lick Creek.	+707	+706	Unincorporated Areas of Hendricks County.
	Approximately 2,750 feet upstream of the confluence with West Fork White Lick Creek.	+714	+713	
White Lick Creek	At the Morgan County boundary/East Hendricks County Road.	+681	+677	Unincorporated Areas of Hendricks County, Town of Avon, Town of Brownsburg, Town of Plainfield.
	Approximately 7,400 feet upstream of East County Road 1000 North.	+914	+915	
Tributary No. 3	At the confluence with White Lick Creek	+776	+774	Unincorporated Areas of Hendricks County, Town of Avon.
	Approximately 250 feet upstream of the confluence with White Lick Creek.	+776	+774	
Tributary No. 4	At the confluence with White Lick Creek	+784	+783	Unincorporated Areas of Hendricks County.
	Approximately 150 feet downstream of County Road 91 North.	+790	+789	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Avon

Maps are available for inspection at 6570 East US 36, Avon, IN 46123.

Town of Brownsburg

Maps are available for inspection at 80 East Vermont, Brownsburg, IN 46112.

Town of Lizton

Maps are available for inspection at 106 North Lebanon Street, Lizton, IN 46149.

Town of Pittsboro

Maps are available for inspection at 80 North Meridian Street, Pittsboro, IN 46167.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Town of Plainfield				
Maps are available for inspection at 355 South Washington Street, Danville, IN 46122.				
Unincorporated Areas of Hendricks County				
Maps are available for inspection at 355 South Washington Street, Danville, IN 46122.				
Cabarrus County, North Carolina, and Incorporated Areas				
Clear Creek	Approximately 400 feet downstream of the Cabarrus/Mecklenburg County boundary.	None	+535	Unincorporated Areas of Cabarrus County, Town of Midland.
	Approximately 150 feet upstream of the Cabarrus/Mecklenburg County boundary.	None	+536	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Midland

Maps are available for inspection at Midland Town Hall, 4293B Highway 24–27 East, Midland, NC.

Unincorporated Areas of Cabarrus County

Maps are available for inspection at Cabarrus County Planning Services, 65 Church Street Southeast, Concord, NC.

Creek County, Oklahoma, and Incorporated Areas				
Nickel Creek	Approximately 2800 feet upstream of W 91st Street intersection.	+638	+640	City of Sapulpa, Unincorporated Areas of Creek County.
	At intersection with Land Road	+669	+670	
Polecat Creek	Approximately 75 feet upstream of Creek Turnpike Intersection.	+651	+654	City of Sapulpa, Unincorporated Areas of Creek County.
	Approximately 200 feet upstream of Highway 75A intersection.	None	+671	
Tributary 2	Confluence with Polecat Creek	None	+645	City of Sapulpa, Unincorporated Areas of Creek County.
	Approximately 5000 feet upstream of Albert Lewis Ward Road intersection.	None	+676	
Tributary 4	Approximately 340 feet downstream from Tulsa Sapulpa and Union Railroad (BFE remains constant).	None	+656	City of Sapulpa, Unincorporated Areas of Creek County.
	Approximately 200 feet upstream of W 91st Street Intersection (BFE remains constant).	None	+656	
Tributary 4–1	Approximately 970 feet downstream of Tulsa Sapulpa and Union Railroad.	None	+656	City of Sapulpa, Unincorporated Areas of Creek County.
	Approximately 175 feet upstream of intersection with W 91st Street.	None	+706	
Rock Creek	Confluence with Polecat Creek	+666	+669	City of Sapulpa, Unincorporated Areas of Creek County.
	Approximately 80 feet upstream of intersection with IH–44.	+686	+685	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sapulpa

Maps are available for inspection at 425 East Dewey, Sapulpa, OK 74066.

Unincorporated Areas of Creek County

Maps are available for inspection at 317 East Lee, Sapulpa, OK 74066.

Oklahoma County, Oklahoma, and Incorporated Areas

Cherry Creek	NE 10th Street	+1163	+1162	City of Del City, City of Oklahoma City.
	Approximately 565 feet upstream to intersection with SE 44th.	+1234	+1233	
Chisolm Creek	Intersection with Hefner Road	+1168	+1169	City of The Village.
	Approximately 103 feet upstream of Greystone Avenue.	+1192	+1189	
Coffee Creek	Confluence with Deep Fork	+965	+955	City of Edmond, Town of Arcadia.
	Approximately 5600 feet upstream of confluence with Deep Fork.	+1101	+1102	
Cowbell Creek Tributary 1	Confluence with Cowbell Creek	None	+1089	City of Edmond.
	Approximately 9050 feet upstream of confluence with Cowbell Creek.	None	+1089	
Crutcho Creek	Approximately 1650 feet downstream of NE 36th Street.	+1156	+1149	City of Midwest City, City of Del City, City of Oklahoma City, Unincorporated Areas of Oklahoma County.
	Approximately 1800 feet downstream of Sunnylane Road.	+1269	+1268	
Trib C (West Crutcho)	Confluence with Crutcho Creek	+1207	+1208	City of Oklahoma City.
	Approximately 800 feet downstream of Sunnylane Road Intersection.	+1255	+1256	
Trib E (East Crutcho)	Confluence with Crutcho Creek	+1207	+1208	City of Oklahoma City.
	Approximately 6450 feet upstream of Air Depot Boulevard.	+1246	+1243	
Tributary B	Confluence with Crutcho Creek	+1196	+1197	City of Del City.
	Intersection with Woodview Drive	+1211	+1213	
Tributary D	Confluence with Crutcho Creek	+1169	+1171	City of Midwest City.
	Approximately 5544 feet upstream of confluence with Crutcho Creek.	+1190	+1192	
Deep Fork	Approximately 100 feet upstream of Luther Avenue	+895	+896	Town of Luther.
	Approximately 345 feet upstream of Peebly Road	+907	+908	
	Confluence with Deep Fork Tributary 3	+946	+946	City of Edmond, Town of Arcadia.
	Approximately 3416 feet upstream of 33rd Street	+972	+963	
(Arcadia Lake)	Upstream of Arcadia Dam at the Intersection with East Hefner Road (BFE REMAINS CONSTANT LAKE).	+972	+1030	City of Edmond, City of Oklahoma City.
Draper Lake Drainage East	Approximately 400 feet upstream of SE 74th Street	None	+1239	City of Oklahoma City.
	Approximately 2100 feet upstream of SE 74th Street	None	+1265	
Drainage West	Approximately 450 feet upstream of SE 74th Street	None	+1226	City of Oklahoma City.
	Approximately 2100 feet upstream of SE 74th Street	None	+1260	
Kuhlman Creek	Approximately 2000 feet upstream from the intersection with Airport Depot Boulevard.	None	+1226	City of Midwest City, City of Oklahoma City.
	Confluence with Crutcho Creek	None	+1999	
Opossum Creek	Confluence with Deep Fork	None	+950	City of Edmond.
	Approximately 28100 feet upstream of confluence with Deep Fork.	None	+1029	
Silver Creek	At the intersection with Spencer Road	+1154	+1155	City of Midwest City, City of Spencer
	Approximately 820 feet upstream of Lloyd Drive	None	+1231	
Smith Creek	Confluence with Deep Fork	None	+907	Town of Luther, City of Oklahoma City.
	Approximately 26200 feet upstream of confluence with Crutcho Creek.	None	+929	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Soldier Creek Tributary to Crutcho Creek.	Confluence with Crutcho Creek	+1168	+1167	City of Midwest City.
	Approximately 26200 feet upstream of confluence with Crutcho Creek.	+1222	+1225	
Spring Creek	Confluence with Arcadia Lake	+986	+1030	City of Edmond.
	Intersection with Interstate 35	+1031	+1032	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Del City

Maps are available for inspection at 4517 SE 29th Street, Del City, OK 73155.

City of Edmond

Maps are available for inspection at 100 E 1st Street, Edmond, OK 73083.

City of Midwest City

Maps are available for inspection at 100 N Midwest City Boulevard, Midwest City, OK 73140.

City of Oklahoma City

Maps are available for inspection at 420 W Main Street, Suite 700, Oklahoma City, OK 73102.

City of Spencer

Maps are available for inspection at 8200 Northeast 36th Street, Spencer, OK 73084.

City of The Village

Maps are available for inspection at 2304 Manchester Drive, The Village, OK 73120.

Town of Arcadia

Maps are available for inspection at 217 North Main Street, Arcadia, OK 73007.

Town of Luther

Maps are available for inspection at 119 South Main Street, Luther, OK 73054.

Unincorporated Areas of Oklahoma County

Maps are available for inspection at 320 Robert S. Kerr, Suite 101, Oklahoma City, OK 73102.

Sevier County, Tennessee, and Incorporated Areas

East Fork Little Pigeon River	840 Feet Upstream of the Confluence with Little Pigeon River.	None	+939	Unincorporated Areas of Sevier County, City of Sevierville.
	1007 Feet Upstream of Oma Lee Drive	None	+1019	
French Broad River	1456 Feet Downstream of Confluence with Dry Branch.	None	+856	Unincorporated Areas of Sevier County, City of Sevierville.
	2179 Feet Upstream of State Highway 338	None	+885	
Gists Creek	3066 Feet Upstream of Confluence with Little Pigeon River.	None	+886	Unincorporated Areas of Sevier County, City of Sevierville.
	1489 Feet Upstream of Chapman Highway	None	+906	
Little Pigeon River	1441 Feet Downstream of Boyds Creek Road	+880	+879	City of Sevierville, Unincorporated Areas of Sevier County.
	1220 Feet Downstream of Confluence with Lone Branch.	None	+948	
Middle Creek	575 Feet Upstream of River Place	None	+905	City of Sevierville, City of Pigeon Forge.
	2200 Feet Downstream of Upper Middle Creek Road	None	+1010	
Mill Creek	342 Upstream of Confluence with West Prong Little Pigeon River.	+967	+965	City of Pigeon Forge, Unincorporated Areas of Sevier County.
	524 Feet Upstream of Mill Creek Road	None	+1121	
Walden Creek	220 Feet Upstream of Confluence with West Prong Little Pigeon River.	+967	+965	City of Pigeon Forge, Unincorporated Areas of Sevier County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
West Prong Little Pigeon River.	276 Feet Downstream of Little Valley Road	None	+1006	City of Sevierville, City of Pigeon Forge, Unincorporated Areas of Sevier County.
	160 Feet Downstream of West Main Street	+898	+901	
	1467 Feet Upstream of 321	None	+1057	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pigeon Forge

Maps are available for inspection at Public Works, 225 Pine Mountain Road, Pigeon Forge, TN 37863.

City of Sevierville

Maps are available for inspection at Sevierville City Hall, 120 Gary Wade Blvd., Sevierville, TN 37862.

Unincorporated Areas of Sevier County

Maps are available for inspection at Sevierville County Emergency Management, 245 Bruce Street, Sevierville, TN 37862.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 30, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23705 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7751]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 5, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7751, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered.

A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Sonoma County, California and Incorporated Areas				
Mount Hood Creek	Approximately 0.38 mile downstream of Sonoma Highway (State Route 12).	None	+468	City of Santa Rosa.
	At Sonoma Highway (State Route 12)	None	+495	
Petaluma River	Approximately 400 feet south of the intersection of South McDowell Boulevard and Cader Lane.	None	+10	City of Petaluma.
Russian River (Area behind Railroad Avenue/Kelly Road levees).	Approximately 1.5 miles downstream of Crocker Road	None	+285	Unincorporated Areas of Sonoma County.
	Approximately 1,550 feet downstream of Crocker Road.	None	+300	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Petaluma

Maps are available for inspection at Petaluma City Hall, 11 English Street, Petaluma, CA.

City of Santa Rosa

Maps are available for inspection at Santa Rosa City Hall, 100 Santa Rosa Avenue, Santa Rosa, CA.

Unincorporated Areas of Sonoma County

Maps are available for inspection at Sonoma County Engineering Division, 2550 Ventura Avenue, Santa Rosa, CA.

Miami-Dade County, Florida and Incorporated Areas				
Inland canal and shallow flooding sources.	City of Coral Gables	*7–*10	*7–*15	City of Coral Gables.
	Town of Cutler Bay	*8–*9	*7–*9	Town of Cutler Bay.
	City of Doral	*6–*7	*5–*8	City of Doral.
	Village of El Portal	*7	*6	Village of El Portal.
	City of Florida City	*9	*3–*7	City of Florida City.
	City of Hialeah	*6–*8	*5–*9	City of Hialeah.
	City of Hialeah Gardens	*6	*5–*9	City of Hialeah Gardens.
	City of Homestead	*4–*10	*3–*10	City of Homestead.
	Town of Medley	*6	*5–*7	Town of Medley.
	City of Miami	*7–*8	*4–*15	City of Miami.
	Miami-Dade County (Unincorporated Areas)	*3–*10	*3–*21	Miami-Dade County (Unincorporated Areas).
	Village of Miami-Shores	None	*11	Village of Miami-Shores.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	City of Miami Springs	*6–*7	*6–*7	City of Miami Springs.
	City of North Miami	None	*12	City of North Miami.
	City of Opa-Locka	*7	*5–*9	City of Opa-Locka.
	Village of Palmetto Bay	None	*7	Village of Palmetto Bay.
	Village of Pinecrest	*10	*7–*10	Village of Pinecrest.
	City of South Miami	*9–*10	*7–*11	City of South Miami.
	City of Sweetwater	None	*8	City of Sweetwater.
	Village of Virginia Gardens	*6	*7	Village of Virginia Gardens.

The new and revised flood elevations affect extensive inland canal and shallow flooding sources in Miami-Dade County and its incorporated areas. This proposed rule lists the range of new and/or revised elevations affecting the communities listed above. Because the specific changes are too numerous to list, residents and lessees of property in Miami-Dade County and its incorporated areas are strongly encouraged to review the FEMA Flood Insurance Rate Maps at the community offices.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Coral Gables

Maps are available for inspection at the City of Coral Gables Department of Public Works, 2800 Southwest 72nd Avenue, Coral Gables, Florida.

Town of Cutler Bay

Maps are available for inspection at the Cutler Bay Town Hall, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida.

City of Doral

Maps are available for inspection at the City of Doral Building Department, 8300 Northwest 53rd Street, Suite 200, Doral, Florida.

Village of El Portal

Maps are available for inspection at the El Portal Village Hall, 500 Northeast 87th Street, El Portal, Florida.

City of Florida City

Maps are available for inspection at the Florida City Building and Zoning Department, 404 West Palm Drive, Building 3, Florida City, Florida.

City of Hialeah

Maps are available for inspection at the City of Hialeah Planning and Zoning Department, 501 Palm Avenue, 4th Floor, Hialeah, Florida.

City of Hialeah Gardens

Maps are available for inspection at the Hialeah Gardens City Hall, 10001 Northwest 87th Avenue, Hialeah Gardens, Florida.

City of Homestead

Maps are available for inspection at the Homestead City Hall, 790 North Homestead Boulevard, Homestead, Florida.

Town of Medley

Maps are available for inspection at the Medley Town Hall, 7331 Northwest 74th Street, Medley, Florida.

City of Miami

Maps are available for inspection at the City of Miami Fire/Emergency Management Department, Miami Riverside Center, 444 Southwest 2nd Avenue, 10th Floor, Miami, Florida.

Miami-Dade County (Unincorporated Areas)

Maps are available for inspection at the Miami-Dade County Department of Environmental Resource Management, 701 Northwest 1st Court, 4th Floor, Miami, Florida.

Village of Miami-Shores

Maps are available for inspection at the Miami Shores Village Hall, 10050 Northeast 2nd Avenue, Miami Shores, Florida.

City of Miami Springs

Maps are available for inspection at the Miami Springs City Hall, 201 Westward Drive, Miami Springs, Florida.

City of North Miami

Maps are available for inspection at the North Miami City Hall, 776 Northeast 125th Street, North Miami, Florida.

City of Opa-Locka

Maps are available for inspection at the Opa-Locka City Hall, 780 Fisherman Street, Suite 335, Opa-Locka, Florida.

Village of Palmetto Bay

Maps are available for inspection at the Palmetto Bay Village Hall, 8950 Southwest 152nd Street, Palmetto Bay, Florida.

Village of Pinecrest

Maps are available for inspection at the Pinecrest Village Hall, 12645 Pinecrest Parkway, Pinecrest, Florida.

City of South Miami

Maps are available for inspection at the South Miami City Hall, 6130 Sunset Drive, South Miami, Florida.

City of Sweetwater

Maps are available for inspection at the Sweetwater City Hall, 500 Southwest 109th Avenue, Sweetwater, Florida.

Village of Virginia Gardens

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at the Virginia Gardens Village Hall, 6498 Northwest 38th Terrace, Virginia Gardens, Florida.				
Brown County, Minnesota, and Incorporated Areas				
Minnesota River	Approximately 5,530 feet downstream of Dakota, Minnesota, and Eastern Railroad.	+805	+807	City of New Ulm, Unincorporated Areas of Brown County.
	Approximately 1,673 feet upstream of county boundary.	+823	+825	

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+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of New Ulm

Maps are available for inspection at 100 North Broadway, New Ulm, MN 56073.

Unincorporated Areas of Brown County

Maps are available for inspection at 14 South State Street, New Ulm, MN.

Bertie County, North Carolina, and Incorporated Areas				
Cashie River	Approximately 4.0 miles upstream of NC–45	+8	+7	Town of Windsor, Unincorporated Areas of Bertie County.
	Approximately 1,150 feet upstream of the confluence of Cashie River Tributary 5.	None	+79	
Indian Creek	At the confluence with Roanoke River	None	+25	Unincorporated Areas of Bertie County, Town of Lewiston Woodville.
	At the confluence of Jacks Branch	None	+44	
Jacks Branch	At the confluence with Indian Creek	None	+44	Unincorporated Areas of Bertie County, Town of Lewiston Woodville.
	Approximately 0.5 mile downstream of Jack Branch Road (State Route 1119).	None	+53	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Bertie County

Maps are available for inspection at Bertie County Building Inspections Department, 106 Dundee Street, Windsor, NC.

Town of Lewiston Woodville

Maps are available for inspection at Lewiston Woodville Town Hall, 103 West Church Street, Lewiston Woodville, NC.

Town of Windsor

Maps are available for inspection at Town of Windsor Building Inspections Department, 128 South King Street, Windsor, NC.

Jefferson County, Tennessee, and Incorporated Areas				
Douglas Lake	Approximately 5,100 feet upstream of confluence of Leadvale Creek.	None	+1002	Unincorporated Areas of Jefferson County, City of Baneberry, Town of Dandridge.
	At Sevier/Jefferson county boundary	None	+1002	
Mossy Creek	Approximately 2,200 feet downstream of Russell Avenue.	+1073	+1075	Unincorporated Areas of Jefferson County, Town of Jefferson City.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,050 feet downstream of Russell Avenue.	+1073	+1075	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
*** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Baneberry

Maps are available for inspection at 667 Harrison Ferry Road, Baneberry, TN 37890.

Town of Dandridge

Maps are available for inspection at P.O. Box 249, Dandridge, TN 37725.

Town of Jefferson City

Maps are available for inspection at P.O. Box 530, 112 West Broadway Boulevard, Jefferson City, TN 37760

Unincorporated Areas of Jefferson County

Maps are available for inspection at P.O. Box 710, 214 West Main Street, Dandridge, TN 37725.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 30, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23706 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–7723–01]

RIN 0648–XD67

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2008 and 2009 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2008 and 2009 harvest specifications, reserves and apportionments, and Pacific halibut prohibited species catch (PSC) for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2008 and 2009 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 7, 2008.

ADDRESSES: You may submit comments, identified by ''RIN 0648–XD67'', by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov;*
- Mail: P. O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from NMFS at the addresses above or from the Alaska Region Web site at *http://www.fakr.noaa.gov.* Copies of the final 2006 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2006, and the October 2007 North Pacific Fishery Management Council (Council) meeting minutes are available from the Council at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510 or from its Web site at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780, or e-mail at *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

These proposed specifications are based in large part on the 2006 SAFE reports. In November 2007, the 2007

SAFE reports were used to develop the 2008 and 2009 final acceptable biological catch (ABC) amounts. Anticipated changes in the final specifications from the proposed specifications are identified in this notice for public review.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The proposed specifications in Tables 1 through 17 of this document satisfy these requirements. For 2008 and 2009, the sum of the proposed TAC amounts is 286,173 mt. Under § 679.20(c)(3), NMFS will publish the 2008 and 2009 final specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2007 meeting, and (3) considering information presented in the Final EIS and the final 2007 SAFE report prepared for the 2008 and 2009 groundfish fisheries.

Other Rules Affecting the 2008 and 2009 Harvest Specifications

Congress granted NMFS specific statutory authority to manage Central GOA rockfish fisheries in Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199; Section 802). The elements of the Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program) are discussed in detail in the proposed and final rules to Amendment 68 to the FMP (71 FR 33040, June 7, 2006, and 71 FR 67210, November 20, 2006, respectively). The Rockfish Program is authorized for five years, from January 1, 2007 until December 31, 2011.

The Rockfish Program allocates exclusive harvesting and processing privileges for the following primary rockfish species: Northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. Secondary species are those species incidentally harvested during the primary rockfish species fisheries and include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. The Rockfish Program also allocates a portion of the total GOA halibut mortality limit annually specified under § 679.21 to participants based on historic halibut mortality rates in the primary rockfish species fisheries. The 2008 amounts of primary rockfish species, secondary species, and halibut mortality to be allocated to the Rockfish Program will not be known until eligible participants apply for participation in the Rockfish Program by March 1, 2008. These amounts will be posted on the Alaska Region Web site at *http://www.fakr.noaa.gov* when they become available early in 2008. The entry level allocation of rockfish, after subtraction of incidental catch amounts, is equal to 5 percent of the Central GOA TAC for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish. Table 6 lists the proposed 2008 and 2009 allocations of rockfish in the Central GOA to the entry level fishery.

The Rockfish Program also establishes catch limits, commonly called ''sideboards,'' to limit the ability of participants eligible for this program to harvest fish in fisheries other than the Central GOA rockfish fisheries. Sideboards limit harvest in specific rockfish fisheries in the Western GOA and in the West Yakutat District and the amount of halibut bycatch that can be used in certain flatfish fisheries. Table 14 lists the proposed 2008 and 2009 Rockfish Program harvest limits. Table 15 lists the proposed 2008 and 2009 Rockfish Program halibut mortality limits for catcher processors and catcher vessels.

Proposed and final rules to implement Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) were published in the **Federal Register** on May 30, 2007 (72 FR 30052) and September 14, 2007 (72 FR 52668). Amendment 80 (hereinafter referred to as the ''Amendment 80 program'') allocates several BSAI non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher processor sector. The Amendment 80 program establishes a limited access privilege program for the non-AFA trawl catcher processor sector. In order to limit the ability of participants eligible for the Amendment 80 program to expand their harvest efforts in the GOA, the Amendment 80 program establishes groundfish and halibut PSC catch limits for Amendment 80 program participants in the GOA. Table 16 lists the proposed 2008 and 2009 sideboard limits for Amendment 80 program participants. Table 17 lists the proposed 2008 and 2009 halibut PSC limits for Amendment 80 vessels using trawl gear.

In April 2007, the Council recommended Amendment 77 to the GOA FMP. Amendment 77, if approved, would remove dark rockfish from the pelagic shelf rockfish (PSR) complex in the GOA FMP in order to allow the State to assume management of dark rockfish. This action is necessary to allow the State to implement more responsive, regionally based management measures than are currently possible under the FMP. From 1997 to 2005, NMFS survey biomass estimates of dark rockfish in the PSR complex have averaged 3.5 percent of the total PSR biomass. If Amendment 77 is approved, a reduction of 3.5 percent could be expected in the overfishing level (OFL), ABC, and TAC levels for the PSR complex in 2009. The amounts of 2009 PSR will be available following the Plan Team's meeting in November 2007.

Proposed ABC and TAC Specifications

The proposed ABCs and TACs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute ABCs and OFLs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. Tier one represents the highest level of information quality available and tier six represents the lowest level of information quality available.

In October 2007, the Council, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP), reviewed current biological and harvest information about the condition of GOA groundfish stocks, most of which was initially compiled by the GOA Groundfish Plan Team (Plan Team) and was presented in the final 2006 SAFE report for the GOA groundfish fisheries, dated November 2006 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses, estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these analyses, the Plan Team estimates an ABC for each species category. The Plan Team will update the 2006 SAFE report to include new information collected during 2007. The Plan Team will provide revised stock assessments in November 2007 in the final 2007 SAFE report. The Council will review the 2007 SAFE report in December 2007.

The final 2008 and 2009 harvest specifications may be adjusted from the proposed harvest specifications based on the 2007 SAFE report.

The SSC adopted the proposed 2008 and 2009 OFL and ABC recommendations from the Plan Team for all groundfish species. These amounts are unchanged from the final 2008 harvest specifications published in the **Federal Register** on March 5, 2007 (72 FR 9676). The AP and the Council recommendations for the proposed 2008 and 2009 OFL, ABC, and TAC amounts are also based on the final 2008 harvest specifications published in the **Federal Register** on March 5, 2007 (72 FR 9676). For 2008 and 2009, the Council recommended and NMFS proposes the OFLs and ABCs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2008 and 2009 ABCs for all assessed groundfish is 511,838 mt, which is higher than the final 2007 ABC total of 490,327 mt (72 FR 9676, March 5, 2007).

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2008 and 2009 that are equal to proposed ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and skates. The Council recommended proposed TACs for 2008 and 2009 that are less than the proposed ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, other rockfish, and Atka mackerel.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (50 CFR 679.23(d)(2)(i) through (iv) and 679.20(a)(5)(iv)(B)).

As in 2007, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2008 and 2009 include commercial fishery and survey data. NMFS stock assessment scientists believe that unbiased commercial fishery catch-per-unit-effort data are useful for stock distribution assessments. NMFS evaluates annually the use of commercial fishery data to ensure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern Regulatory Area and makes available 5 percent of the combined Eastern Regulatory Area TACs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District (WYK) (§ 679.20(a)(4)(i)).

The AP, SSC, and Council recommended apportioning the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. The proposed 2008 and 2009 Pacific cod TACs are affected by the State's fishery for Pacific cod in its waters in the Western and Central Regulatory Areas, as well as in Prince William Sound (PWS).

Accordingly, the Council recommended the proposed 2008 and 2009 Pacific cod TACs be reduced from proposed ABC amounts to account for guideline harvest levels (GHL) established for Pacific cod by the State for fisheries that occur in State waters of the GOA. Therefore, the proposed 2008 and 2009 Pacific cod TACs are less than the proposed ABCs by the following amounts (1) Eastern GOA, 428 mt; (2) Central GOA, 9,817 mt; and (3) Western GOA, 6,961 mt. These amounts reflect the sum of the State's 2008 and 2009 GHLs in these areas, which are 10 percent, 25 percent, and 25 percent of the Eastern, Central, and Western GOA proposed ABCs, respectively.

NMFS also is proposing seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, or jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, or jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(11)).

As in 2007, NMFS proposes to establish for 2008 and 2009 an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs minus the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total catch in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. This action meets the intent of the Steller sea lion protection measures by achieving temporal dispersion of the Pacific cod removals and reducing the likelihood of catch exceeding 60 percent of the annual TAC in the A season (January 1 through June 10).

The FMP specifies that the amount for the ''other species'' category be set at an amount less than or equal to 5 percent of the combined TAC amounts for target species. The proposed 2008 and 2009 ''other species'' TACs of 4,500 mt are less than 5 percent of the combined proposed TAC amounts for target species for 2008 and 2009. The sum of the proposed TACs for all GOA groundfish is 286,173 mt for 2008 and 2009, which is within the OY range specified by the FMP. The sums of the proposed 2008 and 2009 TACs are lower than the sum of the 2007 TACs of 269,912 mt.

NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range. Table 1 lists the proposed 2008 and 2009 ABCs, TACs, and OFLs of groundfish.

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Table 1 - Proposed 2008 and 2009 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulfwide (GW) Districts of the Gulf of Alaska
(values are rounded to the nearest metric ton)

Species	Area[1]	ABC	TAC	OFL
Pollock[2]	Shumagin (610)	30,308	30,308	n/a
	Chirikof (620)	25,313	25,313	n/a
	Kodiak (630)	17,995	17,995	n/a
	WYK (640)	1,694	1,694	n/a
	W/C/WYK (subtotal)	75,310	75,310	105,490
	SEO (650)	6,157	6,157	8,209
	Total	81,467	81,467	113,699
Pacific cod[3]	W	27,846	20,885	n/a
	C	39,270	29,453	n/a
	E	4,284	3,856	n/a
	Total	71,400	54,194	86,000
Flatfish[4] (deep-water)	W	430	430	n/a
	C	4,296	4,296	n/a
	WYK	2,763	2,763	n/a
	SEO	1,494	1,494	n/a
	Total	8,983	8,983	11,412
Rex sole	W	1,122	1,122	n/a
	C	5,327	5,327	n/a
	WYK	1,014	1,014	n/a
	SEO	1,437	1,437	n/a
	Total	8,900	8,900	11,600
Flathead sole	W	11,464	2,000	n/a
	C	27,382	5,000	n/a
	WYK	2,198	2,198	n/a
	SEO	60	60	n/a
	Total	41,104	9,258	51,146
Flatfish[5] (shallow-water)	W	24,720	4,500	n/a

	C	24,258	13,000	n/a
	WYK	628	628	n/a
	SEO	1,844	1,844	n/a
	Total	51,450	19,972	62,418
Arrowtooth flounder	W	21,164	8,000	n/a
	C	141,673	30,000	n/a
	WYK	16,754	2,500	n/a
	SEO	7,172	2,500	n/a
	Total	186,763	43,000	218,020
Sablefish[6]	W	2,458	2,458	n/a
	C	6,159	6,159	n/a
	WYK	2,269	2,269	n/a
	SEO	3,353	3,353	n/a
	E (WYK and SEO) (subtotal)	5,622	5,622	n/a
	Total	14,239	14,239	15,803
Pacific ocean perch[7]	W	4,291	4,291	5,030
	C	7,694	7,694	9,019
	WYK	1,153	1,153	n/a
	SEO	1,659	1,659	n/a
	E (WYK and SEO) (subtotal)	2,812	2,812	3,296
	Total	14,797	14,797	17,345
Shortraker rockfish[8]	W	153	153	n/a
	C	353	353	n/a
	E	337	337	n/a
	Total	843	843	1,124
Rougheye rockfish[9]	W	137	137	n/a
	C	614	614	n/a
	E	242	242	n/a
	Total	993	993	1,197
Other rockfish[10,11]	W	577	577	n/a
	C	386	386	n/a

	WYK	319	319	n/a
	SEO	2,872	200	n/a
	Total	4,154	1,482	5,394
Northern rockfish[11,12]	W	1,383	1,383	n/a
	C	3,365	3,365	n/a
	E	0	0	n/a
	Total	4,748	4,748	5,660
Pelagic shelf rockfish[13]	W	1,752	1,752	n/a
	C	3,973	3,973	n/a
	WYK	366	366	n/a
	SEO	531	531	n/a
	Total	6,622	6,622	8,186
Thornyhead rockfish	W	513	513	n/a
	C	989	989	n/a
	E	707	707	n/a
	Total	2,209	2,209	2,945
Big skates[14]	W	695	695	n/a
	C	2,250	2,250	n/a
	E	599	599	n/a
	Total	3,544	3,544	4,726
Longnose skates[15]	W	65	65	n/a
	C	1,969	1,969	n/a
	E	861	861	n/a
	Total	2,895	2,895	3,860
Other skates[16]	GW	1,617	1,617	2,156
Demersal shelf rockfish[17]	SEO	410	410	650
Atka mackerel	GW	4,700	1,500	6,200
Other species[18]	GW	n/a	4,500	n/a
	Grand Total[19]	511,838	286,173	629,541

[1] Regulatory areas and districts are defined at 50 CFR § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 30%, 48%, and 22% in Statistical Areas 610, 620, and 630, respectively. During the B season, the

apportionment is based on the relative distribution of pollock biomass at 30%, 59%, and 12% in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 53%, 15%, and 32% in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the proposed 2008 and 2009 pollock seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60% to the A season and 40% to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90% for processing by the inshore component and 10% for processing by the offshore component. Table 5 lists the proposed 2008 and 2009 Pacific cod seasonal apportionments.

[4] "Deep-water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears for 2008 and to trawl gear in 2009. Tables 2 and 3 list the proposed 2008 and 2009 sablefish TACs.

[7] "Pacific ocean perch" means Sebastes alutus.

[8] "Shortraker rockfish" means Sebastes borealis.

[9] "Rougheye rockfish" means Sebastes aleutianus.

[10] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

[11] "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), and S. reedi (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, S. polyspinous.

[12] "Northern rockfish" means Sebastes polyspinis.

[13] "Pelagic shelf rockfish" means Sebastes ciliatus (dark), S. variabilis (dusky), S. entomelas (widow), and S. flavidus (yellowtail).

[14] Big skate means Raja binoculata.

[15] Longnose skate means Raja rhina.

[16] Other skates means Bathyraja spp.

[17] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

[18] "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species." The FMP specifies that the amount for the "other species" category be set at an amount less than or equal to 5% of the combined TAC amounts for target species.

[19] The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

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Proposed Apportionment of Reserves

Section 679.20(b)(2) requires that 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date during the fishing year. In 2007, NMFS apportioned all of the reserves in the final harvest specifications. For 2008 and 2009, NMFS proposes apportionment of all of the reserves for pollock, Pacific cod, flatfish, and "other species." Table 1 reflects the apportionment of reserve amounts for these species and species groups.

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Sections 679.20(a)(4)(i) and (ii) require allocation of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern GOA, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern GOA may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)). In recognition of the trawl ban in the SEO District of the Eastern GOA, the Council recommended and NMFS proposes that the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC be available to trawl gear in the WYK District and the remainder of the WYK sablefish TAC be available to vessels using hook-and-line gear. As a result, NMFS proposes to allocate 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in a proposed 2008 allocation of 281 mt to trawl gear and 1,988 mt to hook-and-line gear in the WYK District, and 3,353 mt to hook-and-line gear in the SEO District. Table 2 lists the allocations of the proposed 2008 sablefish TACs to hook-and-line and trawl gear. Table 3 lists the allocations of the proposed 2009 sablefish TACs to trawl gear. The Council recommended that only a trawl sablefish TAC be established for two years.

Table 2 - Proposed 2008 Sablefish TAC Amounts in the Gulf of Alaska and Allocations to Hook-and-Line and Trawl Gear
(values are rounded to the nearest metric ton)

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	2,458	1,966	492
Central	6,159	4,927	1,232
West Yakutat	2,269	1,988	281
Southeast Outside	3,353	3,353	0
Total	14,239	12,234	2,005

Table 3 - Proposed 2009 Sablefish TAC Amounts in the Gulf of Alaska and Allocation to Trawl Gear
(values are rounded to the nearest metric ton)

Area/district	TAC	Hook-and-line allocation[1]	Trawl allocation
Western	2,458	n/a	492
Central	6,159	n/a	1,232
West Yakutat	2,269	n/a	281
Southeast Outside	3,353	n/a	0
Total	14,239	0	2,005

[1]The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further divided between inshore and offshore processing components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, March 10 through May 31, August 25 through October 1, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among statistical areas 610, 620, and 630. In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. For 2008 and 2009, the Council recommended averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season. The average is intended to reflect the distribution of pollock as indicated by the historic performance of the fishery during the A season. Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances. The rollover amount is limited to 20 percent of the unharvested seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The proposed pollock TACs in the WYK of 1,694 mt and SEO District of 6,157 mt for 2008 and 2009 are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

Table 4 lists the proposed 2008 and 2009 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

Table 4 - Proposed 2008 and 2009 Distribution of Pollock in the Central and Western Regulatory Areas of the Gulf of Alaska; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC (values are rounded to the nearest metric ton)

Season	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total
A	5,466	(29.70%)	8,915	(48.44%)	4,023	(21.86%)	18,404
B	5,466	(29.70%)	10,814	(58.76%)	2,124	(11.54%)	18,404
C	9,688	(52.64%)	2,792	(15.17%)	5,924	(32.19%)	18,404
D	9,688	(52.64%)	2,792	(15.17%)	5,924	(32.19%)	18,404
Annual Total	30,308		25,313		17,995		73,616

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1 (§ 679.23(d)(3)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components, as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed, and fishermen participating in other directed fisheries must retain Pacific cod up to the maximum retainable amounts allowed under § 679.20(e) and (f). Under § 679.20(a)(11)(ii), any overage or underage of the Pacific cod allowance from the A season may be subtracted from or added to the subsequent B season allowance.

Section 679.20(a)(6)(ii) requires the allocation of the Pacific cod TAC apportionment in all regulatory areas between vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. Table 5 lists the proposed 2008 and 2009 seasonal apportionments and allocations of the Pacific cod TAC amounts.

Table 5 - Proposed 2008 and 2009 Seasonal Apportionments and Allocation of Pacific Cod TAC Amounts in the Gulf of Alaska; Allocations for Processing by the Inshore and Offshore Components (values are rounded to the nearest metric ton)

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Western	Annual	20,885	18,797	2,089
	A season (60%)	12,531	11,278	1,253
	B season (40%)	8,354	7,519	835
Central	Annual	29,453	26,508	2,945
	A season (60%)	17,672	15,905	1,767
	B season (40%)	11,781	10,603	1,178
Eastern	Annual	3,856	3,470	386
	Total	54,194	48,774	5,419

Proposed Apportionments to the Central GOA Rockfish Pilot Program

Sections 679.81(a)(1) and (2) require the allocation of the primary rockfish species TACs in the Central Regulatory Area after deducting incidental catch needs in other directed groundfish fisheries. Five percent (2.5 percent to trawl gear and 2.5 percent to fixed gear) of the proposed TACs for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish in the Central Regulatory Area are allocated to the entry level rockfish fishery and the remaining 95 percent to those vessels eligible to participate in the Rockfish Program. NMFS proposes 2008 and 2009 incidental catch amounts of 100 mt for northern rockfish, 100 mt for pelagic shelf rockfish, and 200 mt for Pacific ocean perch for other directed groundfish fisheries in the Central Regulatory Area. These proposed amounts are based on the 2003 through 2007 average incidental catch in the Central Regulatory Area by other groundfish fisheries.

Section 679.83(a)(1)(i) requires allocations to the trawl entry level fishery must be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish must be allocated to trawl catcher vessels. Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels must be made after the allocations to trawl gear.

Table 6 lists the proposed 2008 and 2009 allocations of rockfish in the Central GOA to trawl and longline gear in the entry level rockfish fishery.

Table 6 - Proposed 2008 and 2009 Allocations of Rockfish in the Central Gulf of Alaska to Trawl and Longline Gear[1] in the Entry Level Rockfish Fishery
(values are rounded to the nearest mt)

Species	Proposed TAC	Incidental catch allowance	TAC minus ICA	5% TAC	2.5% TAC	Entry level trawl allocation	Entry level longline allocation
Pacific ocean perch	7,694	200	7,494	375	187	366	9
Northern rockfish	3,365	100	3,265	163	82	0	163
Pelagic shelf rockfish	3,973	100	3,873	194	97	0	194
Total	15,032	400	14,632	732	366	366	366

[1] Longline gear includes jig and hook-and-line gear.

Proposed Halibut PSC Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl and hook-and-line gear and permits the establishment of apportionments for pot gear. In October 2007, the Council recommended that NMFS maintain the 2007 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries for 2008 and 2009. Ten metric tons of the hook-and-line limit is further allocated to the demersal shelf rockfish (DSR) fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) making them exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS assumes the halibut bycatch in the DSR fishery is low because of the short soak times for the gear and short duration of the fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut. In 2006 and 2007, estimates of incidental catch of DSR in the commercial halibut fishery and estimates of sport fish catch have approached the final TACs for DSR. As a result, the Alaska Department of Fish and Game closed directed commercial fishing for DSR at the beginning of 2006 and 2007.

Section 679.21(d)(4) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ (Individual Fishing Quota) hook-and-line gear fishery categories from the non-trawl halibut PSC limit for 2008 and 2009. The Council recommended these exemptions because (1) the pot gear fisheries have low halibut bycatch mortality (averaging 18 mt annually from 2001 through 2006 and 8 mt through September 22, 2007); (2) the halibut and sablefish IFQ fisheries have low halibut bycatch mortality because the IFQ program requires retention of legal-sized halibut by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fisheries is assumed to be negligible. Halibut mortality is assumed to be negligible in the jig gear fisheries given the low amount of groundfish harvested by jig gear (averaging 269 mt annually from 2001 through 2006, and 29 mt through September 22, 2007), the selective nature of jig gear, and the likelihood of high survival rates of halibut caught and released by jig gear.

Section 679.21(d)(5) provides NMFS with the authority to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2007 and 2008 harvest specifications (72 FR 9676, March 5, 2007) summarized the Council's and NMFS's findings with respect to each of these FMP considerations. The Council's and NMFS's findings for 2008 and 2009 are unchanged from 2007. Table 7 lists the proposed 2008 and 2009 Pacific halibut PSC limits, allowances, and apportionments. Sections 679.21(d)(5)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year.

Table 7 - Proposed 2008 and 2009 Pacific Halibut PSC Limits, Allowances, and Apportionments (values are in metric tons)

Trawl gear		Hook-and-line gear[1]			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
January 20 - April 1	550 (27.5%)	January 1 - June 10	250 (86%)	January 1 - December 31	10 (100%)
April 1 - July 1	400 (20%)	June 10 - September 1	5 (2%)	n/a	n/a
July 1 - September 1	600 (30%)	September 1 - December 31	35 (12%)	n/a	n/a
September 1 - October 1	150 (7.5%)	n/a	n/a	n/a	n/a
October 1 - December 31	300 (15%)	n/a	n/a	n/a	n/a
Total	2,000 (100%)	n/a	290 (100%)	n/a	10 (100%)

[1]The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) A deep-water species category, comprised of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species category, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and "other species" (§ 679.21(d)(3)(iii)). Table 8 lists the proposed 2008 and 2009 seasonal apportionments of Pacific halibut PSC trawl limits for the deep-water and shallow-water species fishery categories. Based on public comment and information contained in the final 2007 SAFE report, the Council may recommend or NMFS may make changes in the seasonal, gear-type, or fishery category apportionments of halibut PSC limits for the final 2008 and 2009 harvest specifications.

Table 8 - Proposed 2008 and 2009 Seasonal Apportionments of Pacific Halibut PSC Trawl Limits Between the Trawl Gear Deep-Water Species Categories and the Shallow-Water Species Categories (values are in metric tons)

Season	Shallow-water	Deep-water[1]	Total
January 20 - April 1	450	100	550
April 1 - July 1	100	300	400
July 1 - September 1	200	400	600
September 1 - October 1	150	Any remainder	150
Subtotal January 20 - October 1	900	800	1,700
October 1 - December 31[2]	n/a	n/a	300
Total	n/a	n/a	2,000

[1]Vessels participating in cooperatives in the Central Gulf of Alaska Rockfish Pilot Program will receive a portion of the third season (July 1- September 1) deep-water category halibut PSC apportionment. At this time, this amount is not known but will be posted later on the Alaska Region website at http://www.fakr.noaa.gov when it becomes available.

[2]There is no apportionment between shallow-water and deep-water trawl fishery categories during the fifth season (October 1 through December 31).

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2007. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gears through September 22, 2007, is 1,487 mt, 212 mt, and 8 mt, respectively, for a total halibut mortality of 1,707 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2007 fishing year. Trawling during the second season closed for the deep-water species category on May 17 (72 FR 28620, May 22, 2007), and during the third season on August 10 (72 FR 45697, August 15, 2007). Trawling during the second season closed for the shallow-water species category on June 4 (72 FR 31472, June 7, 2007), and during the third second season on August 10 (72 FR 45697, August 15, 2007). To prevent exceeding the fourth season halibut PSC

limit for the shallow-water species category, directed fishing using trawl gear was limited to three 12-hour open periods on September 1 (72 FR 49229, August 28, 2007), September 6 (72 FR 51717, September 11, 2007), and September 11 (72 FR 52491, September 14, 2007), and to one 48-hour period beginning September 21 (72 FR 54603, September 26, 2007). Trawling for all groundfish targets (with the exception of pollock by vessels using pelagic trawl gear) closed for the fifth season on October 8 (72 FR 57888, October 11, 2007), reopened on October 10 (72 FR 58261, October 15, 2007) until October 15 (72 FR 59038, October 18, 2007), and reopened on October 22 (72 FR 60586, October 25, 2007). Fishing for groundfish using hook-and-line gear has remained open in 2007 as the halibut PSC limit has not been reached (as of October 11, 2007). The amount of groundfish that trawl gear might have harvested if halibut PSC limits had not restricted the 2007 season is unknown.

Expected Changes in Groundfish Stocks and Catch

Proposed 2008 and 2009 ABCs for pollock, Pacific cod, deep-water flatfish, flathead sole, arrowtooth flounder, Pacific ocean perch, and pelagic shelf rockfish are higher than those established for 2007 while the proposed 2008 and 2009 ABCs for rex sole and sablefish are lower than those established for 2007. For the remaining target species, the Council recommended that ABC levels remain unchanged from 2007. More information on these changes is included in the final SAFE report (November 2006) and in the Council, SSC, and AP minutes from the October 2007 meeting. These documents are available from the Council (see **ADDRESSES).**

In the GOA, the total proposed 2008 and 2009 TAC amounts are 286,173 mt, an increase of 6 percent from the 2007 TAC total of 269,912 mt. Table 9 compares the final 2007 TACs to the proposed 2008 and 2009 TACs.

Table 9 - Comparison of Final 2007 and Proposed 2008 and 2009 Total Allowable Catch (TACs) amounts in the Gulf of Alaska
(values are rounded to the nearest metric ton)

Species	Final 2007 TACs	Proposed 2008 and 2009 TACS
Pollock	68,307	81,467
Pacific cod	52,264	54,194
Deep-water flatfish	8,707	8,983
Rex sole	9,100	8,900
Flathead sole	9,148	9,258
Shallow water flatfish	19,972	19,972
Arrowtooth flounder	43,000	43,000
Sablefish	14,310	14,239
Pacific ocean perch	14,636	14,797
Shortraker rockfish	843	843
Rougheye rockfish	988	993
Other rockfish	1,482	1,482
Northern rockfish	4,938	4,748
Pelagic shelf rockfish	5,542	6,622
Thornyhead rockfish	2,209	2,209
Big skates	3,544	3,544
Longnose skates	2,895	2,895
Other skates	1,617	1,617
Demersal shelf rockfish	410	410
Atka mackerel	1,500	1,500
"Other species"	4,500	4,500
Total	269,912	286,173

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2006 for the 2007 commercial fishery. The 2006 assessment contains substantial changes from the previous year. Information from ongoing passive integrated transponder (PIT) tag recoveries, as well as inconsistencies in the traditional closed-area stock assessments for some areas has prompted the IPHC to examine stock assessment frameworks. It had been assumed that once the halibut reached legal commercial size there was little movement between regulatory areas. PIT tag recoveries indicate greater movement between regulatory areas than previously thought. In response to this new information, the IPHC developed a coast wide assessment based on a single stock. The assessment adopted a coast-wide harvest rate of 20 percent of the exploitable biomass overall but a higher rate for some areas with net immigration. The IPHC adopted harvest rates of 25 percent in Area 2C, 20 percent in Areas 3A, 3B, and 4A, and 15 percent in Areas 4B, C, D, and E for 2007. The current exploitable halibut biomass in Alaska for 2007 was estimated to be 169,000 mt, down from 189,543 mt in 2006. The female spawning biomass remains far above the minimum biomass, which occurred in the 1970s.

The exploitable biomass of the Pacific halibut stock peaked at 326,520 mt in 1988. According to the IPHC, the long-

term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–2006) in the commercial halibut fisheries in Alaska have averaged 33,970 mt, round weight. Catch in waters off Alaska is 27 percent higher than long-term potential yield for the entire halibut stock, reflecting the good condition of the Pacific halibut resource. In January 2007, the IPHC approved Alaska commercial catch limits totaling 30,368 mt, round weight, in 2007, a 9 percent decrease from 33,421 mt in 2006. Through November 13, 2007, commercial hook-and-line harvests of halibut off Alaska totaled 26,084 mt, round weight.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2006 Pacific halibut stock assessment (December 2006), available on the IPHC Web site at *http://www.iphc.washington.edu.* The IPHC will consider the 2007 Pacific halibut assessment for 2008 at its January 2007 annual meeting when it sets the 2008 commercial halibut fishery quotas.

Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2008 and 2009 groundfish fisheries are expected to use the entire proposed annual halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by first accounting for recreational and subsistence catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Groundfish fishing is not expected to affect adversely the halibut stocks. Methods available for reducing halibut bycatch include: (1) Publication of individual vessel bycatch rates on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* (2) modifications to gear, (3) changes in groundfish fishing seasons, (4) individual transferable quota programs, and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Under 50 CFR 679.2, the definition of ''Authorized fishing gear'' specifies requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations at § 679.2 under ''Authorized fishing gear,'' also define ''pelagic trawl gear'' in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommended and NMFS proposes that the halibut discard mortality rates (DMRs) developed and recommended by the IPHC for the 2008 and 2009 GOA groundfish fisheries be used to monitor the proposed 2008 and 2009 GOA halibut bycatch mortality limits. The IPHC recommended use of long-term average DMRs for the 2008 and 2009 groundfish fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs where a fishery DMR shows large variation from the mean. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1996 and 2005. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the ''other species'' and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for each gear type was recommended as the default rate. Table 10 lists the proposed 2008 and 2009 DMRs, which are unchanged from the 2007 DMRs. The DMRs for hook-and-line target fisheries range from 10 to 14 percent. The DMRs for trawl target fisheries range from 53 to 76 percent. Each DMR for the pot target fisheries is 16 percent. A copy of the document justifying these DMRs is available from the Council (see **ADDRESSES**) and is discussed in Appendix A of the final 2006 SAFE report, dated November 2006.

Table 10 - Proposed 2008 and 2009 Halibut Discard Mortality Rates for Vessels Fishing in the Gulf of Alaska (values are percent of halibut assumed to be dead)

Gear	Target	Halibut discard mortality rate (%)
Hook-and-line	Other species	14
	Skates	14
	Pacific cod	14
	Rockfish	10
Trawl	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	53
	Flathead sole	61
	Non-pelagic pollock	59
	Other species	63
	Skates	63
	Pacific cod	63
	Pelagic pollock	76
	Rex sole	63
	Rockfish	67
	Sablefish	65
	Shallow-water flatfish	71
Pot	Other species	16
	Skates	16
	Pacific cod	16

American Fisheries Act (AFA) Catcher Processor and Catcher Vessel Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA catcher processors and catcher vessels in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from expansion in their fisheries by those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA catcher processors from harvesting any species of fish in the GOA. Additionally, section 679.7(k)(1)(iv) prohibits listed AFA catcher processors from processing any pollock in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA catcher vessels that are less than 125 ft (38.1 m) LOA, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 GOA groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA catcher vessels operating in the GOA are based on their traditional harvest levels in groundfish fisheries covered by the GOA FMP. Section 679.64(b)(3)(iii) establishes the GOA groundfish sideboard limits based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. Table 11 lists the proposed 2008 and 2009 groundfish sideboard limits for non-exempt AFA catcher vessels. All targeted or incidental catch of sideboard species made by non-exempt AFA catcher vessels will be deducted from the sideboard limits in Table 11.

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Table 11 - Proposed 2008 and 2009 GOA Non-Exempt American Fisheries Act Catcher Vessel (CV) Groundfish Harvest Sideboard Limits
(values are rounded to the nearest metric ton)

Species	Season/component/ gear	Area	Ratio of 1995-1997 non-exempt AFA CV catch to 1995-1997 TAC	Proposed 2008 and 2009 TACs	Proposed 2008 and 2009 non-exempt AFA CV sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.6112	3,981	2,433
		Chirikof (620)	0.1427	10,582	1,510
		Kodiak (630)	0.2438	3,841	936
	B Season March 10 - May 31	Shumagin (610)	0.6112	3,981	2,433
		Chirikof (620)	0.1427	12,664	1,807
		Kodiak (630)	0.2438	1,759	429
	C Season August 25 - October 1	Shumagin (610)	0.6112	9,690	5,923
		Chirikof (620)	0.1427	2,792	398
		Kodiak (630)	0.2438	5,921	1,444
	D Season October 1 - November 1	Shumagin (610)	0.6112	9,690	5,923
		Chirikof (620)	0.1427	2,792	398
		Kodiak (630)	0.2438	5,921	1,444
	Annual	WYK (640)	0.3499	1,694	593
		SEO (650)	0.3499	6,157	2,154
Pacific cod	A Season[1] January 1 - June 10	W inshore	0.1423	11,278	1,605
		W offshore	0.1026	1,253	129
		C inshore	0.0722	15,905	1,148
		C offshore	0.0721	1,767	127
	B Season[2] September 1 - December 31	W inshore	0.1423	7,519	1,070
		W offshore	0.1026	835	86
		C inshore	0.0722	10,603	766
		C offshore	0.0721	1,178	85
	Annual	E inshore	0.0079	3,470	27
		E offshore	0.0078	386	3
Flatfish deep-water	Annual	W	0.0000	430	0
		C	0.0670	4,296	288
		E	0.0171	4,257	73
Rex sole	Annual	W	0.0010	1,122	1
		C	0.0402	5,327	214
		E	0.0153	2,451	38
Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0261	5,000	131
		E	0.0048	2,258	11
Flatfish shallow-water	Annual	W	0.0156	4,500	70
		C	0.0598	13,000	777
		E	0.0126	2,472	31

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Arrowtooth flounder	Annual	W	0.0021	8,000	17
		C	0.0309	30,000	927
		E	0.0020	5,000	10
Sablefish	Annual, trawl gear	W	0.0000	492	0
		C	0.0720	1,232	89
		E	0.0488	281	14
Pacific ocean perch	Annual	W	0.0623	4,291	267
		C	0.0866	7,694	666
		E	0.0466	2,812	131
Shortraker rockfish	Annual	W	0.0000	153	0
		C	0.0237	353	8
		E	0.0124	337	4
Rougheye rockfish	Annual	W	0.0000	137	0
		C	0.0237	614	15
		E	0.0124	242	3
Other rockfish	Annual	W	0.0034	577	2
		C	0.2065	386	80
		E	0.0000	519	0
Northern rockfish	Annual	W	0.0003	1,383	0
		C	0.0336	3,365	113
Pelagic shelf rockfish	Annual	W	0.0001	1,752	0
		C	0.0000	3,973	0
		E	0.0067	897	6
Thornyhead rockfish	Annual	W	0.0308	513	16
		C	0.0308	989	30
		E	0.0308	707	22
Big skates	Annual	W	0.0090	695	6
		C	0.0090	2,250	20
		E	0.0090	599	5
Longnose skates	Annual	W	0.0090	65	1
		C	0.0090	1,969	18
		E	0.0090	861	8
Other skates	Annual	Gulfwide	0.0090	1,617	15
Demersal shelf rockfish	Annual	SEO	0.0020	410	1
Atka mackerel	Annual	Gulfwide	0.0309	1,500	46
Other species	Annual	Gulfwide	0.0090	4,500	41

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for non-exempt AFA catcher vessels in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Table 12 lists the proposed 2008 and 2009 catcher vessel halibut PSC limits for non-exempt AFA vessels using trawl gear.

Table 12 - Proposed 2008 and 2009 Non-Exempt American Fisheries Act Catcher Vessel Halibut Prohibited Species Catch (PSC) Limits for Vessels using Trawl Gear in the GOA
(values are in metric tons)

Seasonal allowance	Season	Target fishery	Ratio of 1995-1997 non-exempt AFA CV retained catch to total retained catch	Proposed 2008 and 2009 PSC limit	Proposed 2008 and 2009 non-exempt AFA CV PSC limit
1	January 20 - April 1	shallow-water	0.340	450	153
		deep-water	0.070	100	7
2	April 1- July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
3	July 1 - September 1	shallow-water	0.340	200	68
		deep-water	0.070	400	28
4	September 1 - October 1	shallow-water	0.340	150	51
		deep-water	0.070	0	0
5	October 1 - December 31	all targets	0.205	300	61

Non-AFA Crab Vessel Groundfish Sideboard Limits

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict a vessel's harvest to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Sideboard limits also apply to landings made using an LLP license derived from the history of a restricted vessel, even if that LLP is used on another vessel.

Sideboard limits for non-AFA crab vessels operating in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Sections 680.22 (d) and (e) base the groundfish sideboard limits in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period. Table 13 lists these proposed 2008 and 2009 groundfish sideboard limits for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels will be deducted from the sideboard limits in Table 13.

Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kilograms of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996 and December 31, 2000, and any vessel named on an LLP that was generated in whole or in part by the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

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Table 13 - Proposed 2008 and 2009 GOA Non-American Fisheries Act Crab Vessel Groundfish Harvest Sideboard Limits
(Values are rounded to the nearest metric ton)

Species	Season/component/gear	Area	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	Proposed 2008 and 2009 TACs	Proposed 2008 and 2009 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	3,981	39
		Chirikof (620)	0.0031	10,582	33
		Kodiak (630)	0.0002	3,841	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	3,981	39
		Chirikof (620)	0.0031	12,664	39
		Kodiak (630)	0.0002	1,759	0
	C Season August 25 - October 1	Shumagin (610)	0.0098	9,690	95
		Chirikof (620)	0.0031	2,792	9
		Kodiak (630)	0.0002	5,921	1
	D Season October 1 - November 1	Shumagin (610)	0.0098	9,690	95
		Chirikof (620)	0.0031	2,792	9
		Kodiak (630)	0.0002	5,921	1
	Annual	WYK (640)	0.0000	1,694	0
		SEO (650)	0.0000	6,157	0
Pacific cod	A Season[1] January 1 - June 10	W inshore	0.0902	11,278	1,017
		W offshore	0.2046	1,253	256
		C inshore	0.0383	15,905	609
		C offshore	0.2074	1,767	366
	B Season[2] September 1 - December 31	W inshore	0.0902	7,519	678
		W offshore	0.2046	835	171
		C inshore	0.0383	10,603	406
		C offshore	0.2074	1,178	244
	Annual	E inshore	0.0110	3,470	38
		E offshore	0.0000	386	0
Flatfish deep-water	Annual	W	0.0035	430	2
		C	0.0000	4,296	0
		E	0.0000	4,257	0
Rex sole	Annual	W	0.0000	1,122	0
		C	0.0000	5,327	0
		E	0.0000	2,451	0
Flathead sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	2,258	0
Flatfish shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	2,472	0
Arrowtooth flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	5,000	0
Sablefish	Annual, trawl gear	W	0.0000	492	0

		C	0.0000	1,232	0
		E	0.0000	281	0
Pacific ocean perch	Annual	W	0.0000	4,291	0
		C	0.0000	7,694	0
		E	0.0000	2,812	0
Shortraker rockfish	Annual	W	0.0013	153	0
		C	0.0012	353	0
		E	0.0009	337	0
Rougheye rockfish	Annual	W	0.0067	137	1
		C	0.0047	614	3
		E	0.0008	242	0
Other rockfish	Annual	W	0.0035	577	2
		C	0.0033	386	1
		E	0.0000	519	0
Northern rockfish	Annual	W	0.0005	1,383	1
		C	0.0000	3,365	0
Pelagic shelf rockfish	Annual	W	0.0017	1,752	3
		C	0.0000	3,973	0
		E	0.0000	897	0
Thornyhead rockfish	Annual	W	0.0047	513	2
		C	0.0066	989	7
		E	0.0045	707	3
Big skate	Annual	W	0.0392	695	27
		C	0.0159	2,250	36
		E	0.0000	599	0
Longnose skate	Annual	W	0.0392	65	3
		C	0.0159	1,969	31
		E	0.0000	861	0
Other skates	Annual	Gulfwide	0.0176	1,617	28
Demersal shelf rockfish	Annual	SEO	0.0000	410	0
Atka mackerel	Annual	Gulfwide	0.0000	1,500	0
Other species	Annual	Gulfwide	0.0176	4,500	79

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

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Rockfish Program Groundfish Sideboard Limitations and Halibut Mortality Limitations

The Rockfish Program establishes sideboards to limit the ability of participants eligible for the Rockfish Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Rockfish Program provides certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, adversely affecting the participants in other fisheries. The proposed sideboards for 2008 and 2009 limit the total amount of catch in other groundfish fisheries that could be taken by eligible harvesters and limit the amount of halibut mortality to historic levels. The sideboard measures are in effect only during the month of July. Traditionally, the Central GOA rockfish fisheries opened in July. The sideboards are designed to restrict fishing during the historical season for the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historical rockfish season. The sideboard provisions are discussed in detail in the proposed rule (71 FR 33040, June 7, 2006) and final rule (71 FR 67210, November 20, 2006) for the Rockfish Program. Table 14 lists the proposed 2008 and 2009 Rockfish Program harvest limits in the WYK District and the Western GOA. Table 15 lists the proposed 2008 and 2009 Rockfish Program halibut mortality limits for catcher processors and catcher vessels.

Table 14 - Proposed 2008 and 2009 Rockfish Program Harvest Limits by Sector for West Yakutat District and Western GOA by the Catcher Processor (CP) and Catcher Vessel (CV) Sectors
(values are rounded to the nearest metric ton)

Management Area	Fishery	CP sector (% of TAC)	CV sector (% of TAC)	Proposed 2008 and 2009 TACs	Proposed 2008 and 2009 CP limit	Proposed 2008 and 2009 CV limit
West Yakutat District	Pelagic shelf rockfish	72.4	1.7	366	265	6
	Pacific ocean perch	76.0	2.9	1,153	876	33
Western GOA	Pelagic shelf rockfish	63.3	0.0	1,752	1,109	0
	Pacific ocean perch	61.1	0.0	4,291	2,622	0
	Northern rockfish	78.9	0.0	1,383	1,091	0

Table 15 - Proposed 2008 and 2009 Rockfish Program Halibut Mortality Limits for the Catcher Processor and Catcher Vessel Sectors
(values are rounded to the nearest metric ton)

Sector	Shallow-water complex halibut PSC sideboard	Deep-water complex halibut PSC sideboard	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
Catcher processor	0.54%	3.99%	2,000	11	80
Catcher vessel	6.32%	1.08%	2,000	126	22

Gulf of Alaska Amendment 80 Vessel Groundfish Harvest and PSC Limits

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits shown in Table 37 to part 679. Sideboard limits in the GOA are proposed for pollock in the Western and Central Regulatory Areas and in the WYK District, for Pacific cod gulfwide, for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area and WYK District, and for northern rockfish in the Western Regulatory Area. The harvest of Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central Regulatory Area of the GOA is subject to regulation under the Central GOA Rockfish Program. Amendment 80 program vessels not qualified under the Rockfish Program are excluded from directed fishing for these rockfish species in the Central GOA. Under regulations, the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the GOA. These sideboard limits are necessary to protect the interests of fishermen who do not directly benefit from the Amendment 80 program from expansion into their fisheries by the program's participants.

Groundfish sideboard limits for Amendment 80 vessels operating in the GOA are based on their average aggregate harvests from 1998 to 2004. Table 16 lists the proposed 2008 and 2009 sideboard limits for Amendment 80 vessels. All targeted or incidental catch of sideboard species made by Amendment 80 vessels will be deducted from the sideboard limits in Table 16.

Table 16 - Proposed 2008 and 2009 GOA Groundfish Sideboard Limits for Amendment 80 Vessels

Species	Apportionments and allocations by area/season/processor/gear	Area	Ratio of Amendment 80 sector vessels 1998 - 2004 catch to TAC	2008 and 2009 TAC (mt)	2008 and 2009 Amendment 80 vessel sideboards (mt)
Pollock	A Season January 20 - February 25	Shumagin (610)	0.003	5,466	16
		Chirikof (620)	0.002	8,915	18
		Kodiak (630)	0.002	4,023	8
	B Season March 10 - May 31	Shumagin (610)	0.003	5,466	16
		Chirikof (620)	0.002	10,814	22
		Kodiak (630)	0.002	2,124	4
	C Season August 25 - September 15	Shumagin (610)	0.003	9,688	29
		Chirikof (620)	0.002	2,792	6
		Kodiak (630)	0.002	5,924	12
	D Season October 1 - November 1	Shumagin (610)	0.003	9,688	29
		Chirikof (620)	0.002	2,792	6
		Kodiak (630)	0.002	5,924	12
	Annual	WYK (640)	0.002	1,694	3
Pacific cod	A Season[1] January 1 - June 10	W	0.020	12,531	251
		C	0.044	17,672	778
	B Season[2] September 1 - December 31	W	0.020	8,354	167
		C	0.044	11,781	518
	Annual	WYK	0.034	3,856	131
Pacific ocean perch	Annual	W	0.994	4,291	4,265
		WYK	0.961	1,153	1,108
Northern rockfish	Annual	W	1.000	1,383	1,383
Pelagic shelf rockfish	Annual	W	0.764	1,752	1,339
		WYK	0.896	366	328

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for Amendment 80 vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 vessels in each PSC target category from 1998 through 2004 (Table 38 to 50 CFR part 679). These values are slightly lower than the average historic use to accommodate two factors: allocation of halibut PSC CQ under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction. Table 17 lists the proposed 2008 and 2009 halibut PSC limits for Amendment 80 vessels.

Table 17 - Proposed 2008 and 2009 Halibut Prohibited Species Catch (PSC) Limits for Amendment 80 Vessels in the GOA

Seasonal allowance	Season	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch	2008 and 2009 annual PSC limit (mt)	2008 and 2009 Amendment 80 vessel PSC limit (mt)
1	January 20 - April 1	shallow-water	0.0048	2000	10
		deep-water	0.0115	2000	23
2	April 1 - July 1	shallow-water	0.0189	2000	38
		deep-water	0.1072	2000	214
3	July 1 - September 1	shallow-water	0.0146	2000	29
		deep-water	0.0521	2000	104
4	September 1 - October 1	shallow-water	0.0074	2000	15
		deep-water	0.0014	2000	3
5	October 1 - December 31	shallow-water	0.0227	2000	45
		deep-water	0.0371	2000	74

Classification

NMFS has determined that the proposed specifications are consistent with the FMP and preliminarily determined that the proposed specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. Copies of the Final EIS and ROD for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental consequences of the proposed action and its alternatives on resources in the action area. The Final EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by Section 603 of the Regulatory Flexibility Act. The IRFA evaluates the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the Exclusive Economic Zone (EEZ) off of Alaska. While the specification numbers may change from year to year, the harvest strategy for establishing those numbers remains the same. NMFS therefore is using the same IRFA prepared in connection with the EIS. NMFS published notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 15, 2006 (71 FR 75460). The comment period on the BSAI proposed harvest specifications and IRFA ended on January 16, 2007. NMFS did not receive any comments on the IRFA.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble above. This IRFA meets the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 747 small catcher vessels and less than 20 small catcher processors. The entities directly regulated by this action are those that harvest groundfish in the EEZ of the GOA, and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher processors were considered to be small entities if they had annual gross receipts of $4 million per year or less from all economic activities, including the revenue of their affiliated operations. Data from 2005 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the GOA were used as indices of the potential impacts of the alternative harvest strategies on small entities. An index of revenues were projected to decline under the preferred alternative due to declines in ABCs for key species in the GOA. The index of revenues declined by less than 4 percent between 2006 and 2007 and by less than one percent between 2006 and 2008.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the GOA OY, in which case harvests would be limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rate. Alternative 4 would have set TACs to equal the lower limit of the GOA OY range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the ''no action'' alternative.

Alternatives 3, 4, and 5 were all associated with smaller levels for important fishery TACs than Alternative 2. Estimated total first wholesale gross revenues were used as an index of potential adverse impacts to small entities. As a consequence of the lower TAC levels, Alternatives 3, 4, and 5 all had smaller of these first wholesale revenue indices than Alternative 2.

Thus, Alternatives 3, 4, and 5 had greater adverse impacts on small entities. Alternative 1 appeared to generate higher values of the gross revenue index for fishing operations in the GOA than Alternative 2. A large part of the Alternative 1 GOA revenue appears to be due to the assumption that the full Alternative 1 TAC would be harvested. Much of the larger revenue is due to increases in flatfish TACs that were much greater for Alternative 1 than for Alternative 2. In recent years, halibut bycatch constraints in these fisheries have kept actual flatfish catches from reaching Alternative 1 levels. Therefore, a large part of the revenues associated with Alternative 1 are unlikely to occur. Also, Alternative 2 TACs are constrained by the ABCs the Plan Teams and SSC are likely to recommend to the Council on the basis of a full consideration of biological issues. These ABCs are often less than Alternative 1's maximum permissible ABCs. Therefore higher TACs under Alternative 1 may not be consistent with prudent biological management of the resource. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the Final EIS (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq*; Pub. L. 108–447.

Dated: November 29, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–5940 Filed 12–5–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–7689–01]

RIN 0648–XD69

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2008 and 2009 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2008 and 2009 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2008 and 2009 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by January 7, 2008.

ADDRESSES: You may submit comments, identified by ''RIN 0648–XD69,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov;*
- *Mail:* P.O. Box 21668, Juneau, AK 99802;
- *Fax:* (907) 586–7557; or
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS), Record of Decision (ROD), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from NMFS at the mailing address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov*. Copies of the final 2006 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Bering Sea and Aleutian Islands (BSAI), dated November 2006, are available from the North Pacific Fishery Management Council (Council), 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, 907–271–2809, or from its Web site at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or e-mail at *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2008 and 2009 after: (1) Considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2007 meeting, and (3) considering new information presented in the Final EIS and the final 2007 SAFE reports prepared for the 2008 and 2009 groundfish fisheries.

Other Actions Potentially Affecting the 2008 and 2009 Harvest Specifications

The Council is considering a proposal that would allocate the Pacific cod TAC by Bering Sea subarea and Aleutian Islands (AI) subarea instead of a combined BSAI TAC. Another proposal

would separate some species from the ''other rockfish'' or ''other species'' categories so that individual overfishing levels (OFLs), acceptable biological catches (ABCs), and TACs may be established for these species. These actions, if submitted and approved by the Secretary of Commerce (Secretary), could change the final 2008 and 2009 harvest specifications. Additionally, the existing 2008 harvest specifications will be updated in early 2008 when final harvest specifications for 2008 and new harvest specifications for 2009 are implemented.

Proposed ABC and TAC Harvest Specifications

The proposed ABC levels are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and OFLs involves sophisticated statistical analyses of fish populations. The FMP specifies a successive series of six tiers based on the level of reliable information available to fishery scientists. Tier one represents the highest level of information quality available while tier six represents the lowest level of information quality available.

Appendix A to the final SAFE report for the 2006 BSAI groundfish fisheries dated November 2006 (see **ADDRESSES**) sets forth the best information currently available. Information on the status of stocks, including the 2007 survey results, will be updated and considered by the Council's Groundfish Plan Team in November 2007 for the 2007 SAFE report. The final 2008 and 2009 harvest specifications will be based on the 2007 SAFE report.

In October 2007, the Scientific and Statistical Committee (SSC), Advisory Panel, and the Council reviewed the Plan Team's recommended proposed 2008 and 2009 OFL and ABC amounts. The SSC concurred with the Plan Team's recommendations. The recommendations are based on rollovers of the current 2008 amounts. This uses the best information available from the 2006 stock assessments.

The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council recommended that all the proposed 2008 and 2009 TAC amounts be set equal to the ABC amounts except for reduced TAC amounts for AI subarea and Bogoslof pollock, Pacific cod, Alaska plaice, arrowtooth flounder, rock sole, flathead sole, yellowfin sole, and ''other species.'' As in previous years, the Plan Team, Advisory Panel, SSC, and Council recommended that total removals of Pacific cod from the BSAI not exceed ABC recommendations. Accordingly, the Council recommended that the proposed 2008 and 2009 Pacific cod TACs be adjusted downward from the ABCs by amounts equal to 3 percent of the ABC. This adjustment is necessary to account for the guideline harvest level (GHL) established for Pacific cod by the State of Alaska (State) for a State-managed fishery that occurs in State waters in the AI subarea. Finally, the Council recommended using the 2007 and 2008 PSC allowances for the proposed 2008 and 2009 PSC allowances. The Council will reconsider the OFL, ABC, TAC, and PSC amounts in December 2007 after the Plan Team incorporates new status of groundfish stocks information into a final 2007 SAFE report for the 2008 and 2009 BSAI groundfish fishery. None of the Council's recommended proposed TACs for 2008 or 2009 exceeds the recommended 2008 or 2009 proposed ABC for any species category. NMFS finds the Council's recommended proposed 2008 and 2009 OFL, ABC, and TAC amounts consistent with the best available information on the biological condition of the groundfish stocks.

The final rule implementing Amendment 80 to the BSAI FMP was published in the **Federal Register** on September 14, 2007 (72 FR 52668). Amendment 80 allocates total allowable catch of specified groundfish species and halibut and crab PSC limits among several BSAI non-pollock trawl groundfish fisheries fishing sectors, and it facilitates the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector. The Amendment 80 species are Atka mackerel, flathead sole, Pacific cod, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch.

The final rule implementing Amendment 85 to the FMP was published in the **Federal Register** on September 4, 2007 (72 FR 50788). Amendment 85 revises the current allocations of BSAI Pacific cod TAC and seasonal apportionments among various harvest sectors and seasonal apportionments.

Table 1 lists the proposed 2008 and 2009 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1– PROPOSED 2008 AND 2009 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI[1]

[Amounts are in metric tons]

Species	Area	Proposed 2008 and 2009				
		OFL	ABC	TAC	ITAC[2]	CDQ[3,4,5]
Pollock[3]	BS	1,431,000	1,318,000	1,318,000	1,186,200	131,800
	AI	50,300	41,000	19,000	17,100	1,900
	Bogoslof	48,000	5,220	10	10	0
Pacific cod[4]	BSAI	154,000	131,000	127,070	113,474	13,596
Sablefish[5]	BS	3,290	2,970	2,970	1,263	111
	AI	3,100	2,800	2,800	596	52
Atka mackerel	BSAI	64,200	54,900	54,900	49,026	5,874
	EAI/BS	n/a	17,600	17,600	15,717	1,883
	CAI	n/a	22,000	22,000	19,646	2,354
	WAI	n/a	15,300	15,300	13,663	1,637
Yellowfin sole	BSAI	261,000	245,000	150,000	133,950	16,050
Rock sole	BSAI	271,000	268,000	75,000	66,975	8,025
Greenland turbot	BSAI	16,000	2,490	2,490	2,117	n/a
	BS	n/a	1,720	1,720	1,462	184
	AI	n/a	770	770	655	0
Arrowtooth flounder	BSAI	208,000	171,000	30,000	25,500	3,210
Flathead sole	BSAI	92,800	77,200	45,000	40,185	4,815
Other flatfish[6]	BSAI	28,500	21,400	21,400	18,190	0
Alaska plaice	BSAI	252,000	199,000	60,000	51,000	0
Pacific ocean perch	BSAI	25,600	21,600	21,600	19,114	n/a
	BS	n/a	4,080	4,080	3,468	0
	EAI	n/a	4,900	4,900	4,376	524
	CAI	n/a	5,000	5,000	4,465	535
	WAI	n/a	7,620	7,620	6,805	815
Northern rockfish	BSAI	9,700	8,150	8,150	6,928	0
Shortraker rockfish	BSAI	564	424	424	360	0
Rougheye rockfish	BSAI	269	202	202	172	0
Other rockfish[7]	BSAI	1,330	999	999	849	0
	BS	n/a	414	414	352	0
	AI	n/a	585	585	497	0
Squid	BSAI	2,620	1,970	1,970	1,675	0
Other species[8]	BSAI	91,700	68,800	58,015	49,313	0
TOTAL		3,014,973	2,642,125	2,000,000	1,783,996	187,491

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

[3] Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2.8 percent), is further allocated by sector for a directed pollock fishery as follows: inshore - 50 percent; catcher/processor - 40 percent; and motherships - 10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt); is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by three percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland

turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish," squid, and "other species" are not allocated to the CDQ program.

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

[7] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or ''other species'' category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of Bering Sea Greenland turbot and arrowtooth flounder be allocated to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Section 679.21(e)(3)(i)(A) requires withholding 7.5 percent of the Chinook salmon PSC limit, 10.7 percent of the crab and non-Chinook salmon PSC limits, and 343 metric tons (mt) of halibut PSC as PSQ reserves for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS proposes a pollock ICA of 2.8 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2007. During this 9-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with a 9-year average of 3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS proposes a pollock ICA of 1,600 mt for AI subarea after subtraction of the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2007. During this 5-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 5-year average of 6 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 2,000 mt of flathead sole, 2,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt each of Western and Central Aleutian District Pacific ocean perch and Atka mackerel, 100 mt of Eastern Aleutian District Pacific ocean perch, and 1,400 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2007.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species or to the ''other species'' category during the year, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(ii)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of 10 percent for the CDQ program and 2.8 percent for the ICA, be allocated as a directed fishing allowance (DFA) as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA. In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these proposed 2008 and 2009 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding Bering Sea subarea pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2008 and 2009 allocations of pollock TAC. Tables 9 through 12 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. In past years, the proposed harvest specifications included text and tables describing pollock allocations to the Bering Sea subarea inshore pollock cooperatives and open access sector. These allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2008 have not been submitted to NMFS, thereby preventing NMFS from calculating 2008 allocations, NMFS has not included inshore cooperative text and tables in these proposed harvest specifications. NMFS will post AFA inshore

cooperative allocations on the Alaska Region Web site at *http://www.fakr.noaa.gov* when they become available in December 2007.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until April 1. The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists by sector these proposed 2008 and 2009 amounts.

TABLE 2–PROPOSED 2008 AND 2009 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2008 and 2009 allocations	2008 and 2009 A season[1]		2008 and 2009 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea	1,318,000	n/a	n/a	n/a
CDQ DFA	131,800	52,720	36,904	79,080
ICA[1]	33,214	n/a	n/a	n/a
AFA Inshore	576,493	230,597	161,418	345,896
AFA Catcher/Processors[3]	461,195	184,478	129,134	276,717
Catch by C/Ps	421,993	168,797	n/a	253,196
Catch by CVs[3]	39,202	15,681	n/a	23,521
Unlisted C/P Limit[4]	2,306	922	n/a	1,384
AFA Motherships	115,299	46,119	32,284	69,179
Excessive Harvesting Limit[5]	201,773	n/a	n/a	n/a
Excessive Processing Limit[6]	345,896	n/a	n/a	n/a
Total Bering Sea DFA	1,152,987	461,195	322,836	691,792
Aleutian Islands subarea[1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800
Aleut Corporation	15,500	10,200	n/a	5,300
Bogoslof District ICA[7]	10	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtraction for the CDQ DFA (10 percent) and the ICA (2.8 percent), is allocated as a DFA as follows: inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20-June 10) and 60 percent of the DFA is allocated to the B season (June 10-November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(6) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs not including CDQ.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs not including CDQ.

[7] The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2008 and 2009 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes a 0.5 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2008 and 2009. Based on the proposed 2008 and 2009 TAC of 17,600 mt after subtractions of the CDQ reserve and ICA, the jig gear allocation would be 72 mt for 2008 and 2009.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii)(C)(1), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts.

NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ fishery categories: The BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of the three non-CDQ fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply (see § 679.20(a)(8)(iii)). There is no allocation of Atka mackerel to the BSAI trawl limited access sector in the Western Aleutian District. Therefore, no vessels in the BSAI trawl limited access sector will be assigned to the Western Aleutian District HLA fishery.

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives: A first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery: A first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. NMFS will initially open fishing for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea allocation for any one of the three fishery categories allocated Atka mackerel TAC.

TABLE 3–PROPOSED 2008 AND 2009 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector[2]	Season[1,3,4]	2008 allocation by area			2009 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	17,600	22,000	15,300	17,600	22,000	15,300
CDQ reserve	Total	1,883	2,354	1,637	1,883	2,354	1,637
	HLA[5]	n/a	1,412	982	n/a	1,412	982
ICA	Total	1,400	10	10	1,400	10	10
Jig[6]	Total	72	0	0	72	0	0
BSAI trawl limited access	Total	285	393	0	570	785	0
	A	142	196	0	285	393	0
	HLA	n/a	118	0	n/a	236	0
	B	142	196	0	285	393	0
	HLA	n/a	118	0	n/a	236	0
Amendment 80 limited access	Total	7,348	11,598	8,417	7,190	11,359	8,418
	A	3,674	5,799	4,209	3,595	5,680	4,209
	HLA	n/a	3,479	2,525	n/a	3,408	2,525
	B	3,674	5,799	4,209	3,595	5,680	4,209
	HLA	n/a	3,479	2,525	n/a	3,408	2,525
Amendment 80 cooperatives	Total	6,612	7,646	5,236	6,485	7,492	5,235
	A	3,306	3,823	2,618	3,243	3,746	2,618
	HLA	n/a	2,294	1,571	n/a	2,248	1,571
	B	3,306	3,823	2,618	3,243	3,746	2,618
	HLA	n/a	2,294	1,571	n/a	2,248	1,571

[1] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[2] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1.

[5] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2008 and 2009, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Section 679.20(a)(7)(i) and (ii) requires that the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ program, be allocated as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2008 and 2009 based on anticipated incidental catch in these fisheries. The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

Pursuant to §§ 679.20(a)(7)(i)(B) and 679.23(e)(5), the CDQ season allowances by gear are as follows: for most hook-and-line catcher/processors and hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, the first seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery for pot gear or catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season, and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first and third seasonal allowances are each allocated 40 percent of the ITAC, and the second seasonal allowance is allocated 20 percent of the ITAC.

Pursuant to §§ 679.20(a)(7)(iv)(A) and 679.23(e)(5), the non-CDQ season allowances by gear are as follows. For hook-and-line and pot catcher/processors and hook-and-line and pot vessels greater than or equal to 60 ft (18.3 m) LOA, the first seasonal allowance of 51 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 49 percent of the ITAC is made available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1, the second season is April 1 to June 10, and the third season is June 10 to November 1. The trawl catcher vessel allocation is further allocated as 74 percent in the first season, 11 percent in the second season, and 15 percent in the third season. The trawl catcher/processor allocation is allocated 75 percent in the first season, 25 percent in the second season, and zero percent in the third season. For jig gear, the first seasonal allowance is allocated 60 percent of the ITAC, and the second and third seasonal allowances are each allocated 20 percent of the ITAC. Table 4 lists the proposed 2008 and 2009 allocations and seasonal apportionments of the Pacific cod TAC.

TABLE 4–PROPOSED 2008 AND 2009 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2008 and 2009 share of gear sector total	2008 and 2009 share of sector total	2008 and 2009 seasonal apportionment	
				Date	Amount
Total TAC	100	127,070	n/a	n/a	n/a
CDQ	10.7	13,596	n/a	see §679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	68,992	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	68,492	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	54,861	Jan 1-Jun 10	27,979
				Jun 10-Dec 31	26,882
Hook-and-line catcher vessels ≥ 60 ft LOA	0.2	n/a	225	Jan 1-Jun 10	115
				Jun 10-Dec 31	110
Pot catcher/processors	1.5	n/a	1,690	Jan 1-Jun 10	862
				Sept 1-Dec 31	828
Pot catcher vessels ≥ 60 ft LOA	8.4	n/a	9,463	Jan 1-Jun 10	4,826
				Sept 1-Dec 31	4,637
Catcher vessels < 60 ft LOA using hook-and-line or pot gear	2.0	n/a	2,253	n/a	n/a
Trawl catcher vessels	22.1	25,078	n/a	Jan 20-Apr 1	18,557
				Apr 1-Jun 10	2,759
				Jun 10-Nov 1	3,762
AFA trawl catcher processors	2.3	2,610	n/a	Jan 20-Apr 1	1,957
				Apr 1- Jun 10	652
				Jun 10-Nov 1	0
Amendment 80 limited access	n/a	2,454	n/a	Jan 20-Apr 1	1,841
				Apr 1- Jun 10	614
				Jun 10-Nov 1	0
Amendment 80 cooperative	n/a	12,754	n/a	Jan 20-Apr 1	9,566
				Apr 1- Jun 10	3,189
				Jun 10-Nov 1	0
Jig	1.4	1,589	n/a	Jan 1-Apr 30	953
				Apr 30-Aug 31	318
				Aug 31-Dec 31	318

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2008 and 2009 based on anticipated incidental catch in these fisheries.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl gear and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportionment of 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2008 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries would reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2008 and 2009 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5–PROPOSED 2008 AND 2009 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2008 Share of TAC	2008 ITAC[1]	2008 CDQ reserve	2009 Share of TAC	2009 ITAC	2009 CDQ reserve
Bering Sea							
Trawl	50	1,485	1,262	111	1,485	1,262	0
Hook-and-line gear[2]	50	1,485	n/a	297	n/a	n/a	n/a
TOTAL	100	2,970	1,262	408	1,485	1,262	0
Aleutian Islands							
Trawl	25	700	595	53	700	595	0
Hook-and-line gear[2]	75	2,100	n/a	420	n/a	n/a	n/a
TOTAL	100	2,800	595	473	700	595	0

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of the Aleutian Islands Pacific Ocean Perch, Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require the allocation of the Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs in the BSAI, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and § 679.91. Table 6 lists the proposed 2008 and 2009 allocations and seasonal apportionments of the Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6–PROPOSED 2008 AND 2009 CDQ RESERVES, INCIDENTAL CATCH AMOUNTS, AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Species	Pacific ocean perch					Flathead sole	Rock sole	Yellowfin sole
Area	2008 Eastern Aleutian District	2009 Eastern Aleutian District	2008 Central Aleutian District	2009 Central Aleutian District	2008 and 2009 Western Aleutian District	BSAI	BSAI	BSAI
TAC	4,900	4,900	5,000	5,000	7,620	45,000	75,000	150,000
CDQ	524	524	535	535	815	4,815	8,025	16,050
ICA	100	100	10	10	10	2,000	2,000	2,000
BSAI trawl limited access	214	428	223	446	136	0	0	18,050
Amendment 80 limited access	2,154	2,041	2,244	2,126	3,531	4,177	15,696	45,314
Amendment 80 cooperatives	1,908	1,808	1,988	1,884	3,128	34,008	49,279	68,587

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2008 and 2009 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i) and (e)(4)(i)(A) allocate 276 mt of the trawl halibut mortality and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the prohibited species quota (PSQ) reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(vii) specifies 29,000 fish as the 2008 and 2009 Chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Section 679.21(e)(3)(i)(A)(3)(i) allocates 7.5 percent, or 2,175 Chinook salmon, as the PSQ reserve for the CDQ program and allocates the remaining 26,825 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(ix) specifies 700 fish as the 2008 and 2009 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(3)(i) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(viii) specifies 42,000 fish as the 2008 and 2009 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(3)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2007 regarding PSC limits and apportionments, the Council recommended and NMFS proposes using the crab and herring 2007 and 2008 PSC limits and apportionments for the proposed 2008 and 2009 limits and apportionments. The Council will reconsider these amounts in December 2007, based on recommendations by the Plan Team and the SSC. Pursuant to § 679.21(e)(3)(i)(A)(1), 10.7 percent of each PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2006 survey data at 29.7 million red king crabs, and the effective spawning biomass is estimated at 157 million pounds (71,215 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the proposed 2008 and 2009 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million king crab and the effective spawning biomass estimate of more than 55 million pounds (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC allowance based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC allowance within the RKCSS (Table 7b).

Based on 2006 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 866 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the calculated 2008 and 2009 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits derive from the *C. bairdi* crab abundance

estimate of more than 400 million animals.

Pursuant to § 679.21(e)(1)(iv), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2006 survey estimate of 3.25 billion animals, the calculated limit is 4,350,000 animals.

Pursuant to § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2008 and 2009 herring biomass is 178,652 mt. This amount was derived using 2006 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit proposed for 2008 and 2009 is 1,787 mt for all trawl gear as presented in Tables 7a and b.

Section 679.21(e)(3) requires, after subtraction of PSQ reserves, that crab and halibut trawl PSC be apportioned between the BSAI trawl limited access and Amendment 80 sectors as presented in Table 7a. The amount of 2008 and 2009 PSC assigned to the Amendment 80 sector is specified in Table 35 to part 679. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then sub-allocated to Amendment 80 cooperatives as PSC cooperative quota (CQ) and to the Amendment 80 limited access fishery as presented in Tables 7d and e. PSC CQ assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. Section 679.21(e)(3)(i)(B) requires the apportionment of each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(4)(i)(B) requires the apportionment of halibut to the non-trawl fishery categories based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limits. Section 679.21(e)(4)(ii) authorizes the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Table 7c lists the fishery bycatch allowances for the BSAI trawl limited access and non-trawl fisheries.

Section 679.21(e)(4)(ii) also authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years after consultation with the Council, NMFS proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) the pot gear fisheries have low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet is assumed to be negligible, and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program (subpart D of 50 CFR part 679) requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ. In 2007, total groundfish catch for the pot gear fishery in the BSAI was approximately 19,916 mt, with an associated halibut bycatch mortality of about 1 mt. The 2007 jig gear fishery harvested about 89 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. NMFS proposes the Council's recommendation of the seasonal PSC apportionments in Tables 7c and 7e to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7a–PROPOSED 2008 AND 2009 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ[2]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ[2]	CDQ PSQ reserve[2]	Amendment 80 sector		BSAI trawl limited access fishery
						2008	2009	
Halibut mortality (mt) BSAI	900	832	3,675	3,400	343	2,525	2,475	875
Herring (mt) BSAI	n/a	n/a	1,787	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1[1]	n/a	n/a	197,000	175,921	21,079	109,915	104,427	53,797
C. opilio (animals) COBLZ[1]	n/a	n/a	4,350,000	3,884,550	465,450	2,386,668	2,267,412	1,248,494
C. bairdi crab (animals) Zone 1[1]	n/a	n/a	980,000	875,140	104,860	460,674	437,658	411,228
C. bairdi crab (animals) Zone 2[1]	n/a	n/a	2,970,000	2,652,210	317,790	784,789	745,536	1,241,500

[1] Refer to 50 CFR § 679.2 for definitions of areas.

[2] Sections 679.21(e)(3)(i) and (e)(4)(i)(A) allocate 276 mt of the trawl halibut mortality and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

TABLE 7b–PROPOSED 2008 AND 2009 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Trawl gear	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	153	n/a
Rock sole/flathead sole/other flatfish[1]	27	n/a
Turbot/arrowtooth/sablefish[2]	12	n/a
Rockfish	n/a	n/a
July 1 - December 31	10	n/a
Pacific cod	27	n/a
Midwater trawl pollock	1,364	n/a
Pollock/Atka mackerel/other species[3]	194	n/a
Red king crab savings subarea	n/a	n/a
Non-pelagic trawl gear[4]	n/a	49,250
Total trawl PSC	1,787	197,000

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[3] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[4] In October 2007 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

TABLE 7c–PROPOSED 2008 AND 2009 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and zone				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[1]	C. bairdi (animals) Zone 1[1]	C. bairdi (animals) Zone 2[1]
Yellowfin sole	145	29,938	1,170,367	259,003	1,036,505
Rock sole/flathead sole/other flatfish[2]	0	0	0	0	0
Turbot/arrowtooth/sablefish[3]	0	0	0	0	0
Rockfish	n/a	n/a	n/a	n/a	n/a
June 1 - December 31	3	n/a	2,000	n/a	1,000
Pacific cod	577	23,499	45,677	139,138	188,058
Pollock/Atka mackerel/other species[4]	150	360	30,451	13,087	15,937
Total BSAI trawl limited access PSC	875	53,797	1,248,494	411,228	1,241,500

Non-trawl fisheries	Catcher processor	Catcher vessel
Pacific cod-Total	760	15
January 1-June 10	314	10
June 10-August 15	0	0
August 15-December 31	446	5
Other non-trawl-Total		58
May 1-December 31		58
Groundfish pot and jig		exempt
Sablefish hook-and-line		exempt
Total non trawl PSC		833

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

TABLE 7d–PROPOSED 2008 AND 2009 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 COOPERATIVES

Year	Prohibited species and zone				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[1]	C. bairdi (animals)	
				Zone 1[1]	Zone 2[1]
2008	1,837	78,631	1,632,432	340,520	580,311
2009	1,801	74,704	1,550,864	323,507	551,286

[1] Refer to § 679.2 for definitions of areas.

TABLE 7e–PROPOSED 2008 AND 2009 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES

Amendment 80 trawl limited access fisheries	Prohibited species and zone									
	Halibut mortality (mt) BSAI		Red king crab (animals) Zone 1[1]		C. opilio (animals) COBLZ[1]		C. bairdi (animals) Zone 1[1]		C. bairdi (animals) Zone 2[1]	
	2008	2009	2008	2009	2008	2009	2008	2009	20082	2009
Yellowfin sole	190	186	5,810	5,520	580,761	551,742	45,178	42,921	133,115	126,457
Jan 20 - Apr 1	63	62	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Apr 1 - May 21	39	38	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
May 21 - Jul 1	10	10	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Jul 1 - Dec 31	77	75	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Rock sole/other flat/flathead sole[2]	168	164	20,844	19,803	120,677	114,647	48,422	46,003	44,372	42,152
Jan 20 - Apr 1	101	99	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Apr 1 - Jul 1	33	33	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
July 1 - Dec 31	34	33	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Turbot/arrowtooth/ sablefish[3]	n/a	0	n/a	n/a	7,542	7,165	n/a	n/a	n/a	n/a
Rockfish	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Jul 1 - Dec 31	14	14	n/a	n/a	7,542	7,165	n/a	n/a	818	777
Pacific cod	270	265	4,560	4,332	22,627	21,496	24,271	23,058	24,129	22,922
Pollock / Atka mackerel/other[4]	47	46	69	66	15,085	14,331	2,283	2,169	2,045	1,943
Total Amendment 80 trawl limited access PSC	688	674	31,284	29,722	754,235	716,548	120,154	114,151	204,477	194,250

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS proposes the Council's recommendation that the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) for the 2008 and 2009 BSAI groundfish fisheries be used for monitoring the proposed 2008 and 2009 halibut bycatch allowances (see Tables 7a-e). The DMRs proposed for the 2008 and 2009 BSAI non-CDQ fisheries are the same as those used in 2007. The IPHC developed the DMRs for the 2008 and 2009 BSAI non-CDQ groundfish fisheries using the 10-year mean DMRs for those fisheries. The IPHC changed the DMRs for the 2008 and 2009 BSAI CDQ groundfish fisheries using the 1998 to 2006 DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A copy of the document justifying these DMRs is available from the Council (see **ADDRESSES**) and the DMRs are discussed in Appendix A of the final 2006 SAFE report dated November 2006. Table 8 lists the proposed 2008 and 2009 DMRs.

TABLE 8–PROPOSED 2008 AND 2009 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	13
	Other species	11
	Pacific cod	11
	Rockfish	17
Non-CDQ trawl	Arrowtooth flounder	75
	Atka mackerel	76
	Flathead sole	70
	Greenland turbot	70
	Non-pelagic pollock	74
	Pelagic pollock	88
	Other flatfish	74
	Other species	70
	Pacific cod	70
	Rockfish	76
	Rock sole	80
	Sablefish	75
	Yellowfin sole	80
Non-CDQ pot	Other species	7
	Pacific cod	7
CDQ trawl	Atka mackerel	85
	Flathead sole	70
	Non-pelagic pollock	86
	Pelagic pollock	90
	Rockfish	82
	Rock sole	86
	Yellowfin sole	86
CDQ hook-and-line	Greenland turbot	4
	Pacific cod	10
CDQ pot	Pacific cod	7
	Sablefish	34

Central Gulf of Alaska Rockfish Pilot Program (Rockfish program)

The Council adopted the Rockfish program to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199) on June 6, 2005. The basis for the BSAI fishing prohibitions and the catcher vessel BSAI Pacific cod sideboard limits of the Rockfish program are discussed in detail in final rule for Amendment 68 to the FMP for Groundfish of the GOA (71 FR 67210, November 20, 2006). Pursuant to § 679.82(d)(6)(i), the proposed catcher vessel BSAI Pacific cod sideboard limit would be 0.0 mt, and in the final 2008 and 2009 harvest specifications this would effectively close directed fishing for BSAI Pacific cod in July for catcher vessels under the Rockfish program sideboard limitations.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Table 9 lists the proposed 2008 and 2009 catcher/processor sideboard limits. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

All harvests of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 9. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the proposed 2008 and 2009 sideboard limits for the listed AFA catcher/processors.

TABLE 9–PROPOSED 2008 AND 2009 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995 - 1997			2008 and 2009 ITAC available to all trawl C/Ps[1]	2008 and 2009 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Sablefish trawl	BS	8	497	0.016	1,263	20
	AI	0	145	0.000	596	0
Atka mackerel	Central AI					
	A season[2]	n/a	n/a	0.115	9,823	1,130
	HLA limit[3]	n/a	n/a	n/a	5,894	678
	B season[2]	n/a	n/a	0.115	9,823	1,130
	HLA limit[3]	n/a	n/a	n/a	5,894	678
	Western AI					
	A season[2]	n/a	n/a	0.200	6,831	1,366
	HLA limit[3]	n/a	n/a	n/a	4,099	820
	B season[2]	n/a	n/a	0.200	6,831	1,366
	HLA limit[3]	n/a	n/a	n/a	4,099	820
Yellowfin sole[4]	BSAI	100,192	435,788	0.230	131,950	n/a
Rock sole	BSAI	6,317	169,362	0.037	66,975	2,478
Greenland turbot	BS	121	17,305	0.007	1,462	10
	AI	23	4,987	0.005	655	3
Arrowtooth flounder	BSAI	76	33,987	0.002	25,500	51
Flathead sole	BSAI	1,925	52,755	0.036	40,185	1,447
Alaska plaice	BSAI	14	9,438	0.001	51,000	51
Other flatfish	BSAI	3,058	52,298	0.058	18,190	1,055
Pacific ocean perch	BS	12	4,879	0.002	3,468	7
	Eastern AI	125	6,179	0.020	4,376	88
	Central AI	3	5,698	0.001	4,465	4
	Western AI	54	13,598	0.004	6,805	27
Northern rockfish	BSAI	91	13,040	0.007	7,539	53
Shortraker rockfish	BSAI	50	2,811	0.018	392	7
Rougheye rockfish	BSAI	50	2,811	0.018	187	3
Other rockfish	BS	18	621	0.029	383	11
	AI	22	806	0.027	497	13
Squid	BSAI	73	3,328	0.022	1,675	37
Other species	BSAI	553	68,672	0.008	49,313	395

[1] Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[3] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2008 and 2009, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[4] Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2008 and 2009 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt. See 72 FR 52668, 52726 (September 14, 2007).

Section 679.64(a)(2) and Tables 40 and 41 to part 679 establish a formula for PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major

provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 10 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the proposed 2008 and 2009 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a proposed 2008 or 2009 PSC sideboard limit listed in Table 10 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories according to regulations at § 679.21(e)(3)(iv).

TABLE 10–PROPOSED 2008 AND 2009 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species	Ratio of PSC catch to total PSC	Proposed 2008 and 2009 PSC available to trawl vessels after subtraction of PSQ[1]	Proposed 2008 and 2009 C/P sideboard limit[1]
Halibut mortality	n/a	n/a	286
Red king crab Zone 1[2]	0.007	175,921	1,231
C. opilio (COBLZ)[2]	0.153	3,884,550	594,336
C. bairdi	n/a	n/a	n/a
Zone 1[2]	0.140	875,140	122,520
Zone 2[2]	0.050	2,652,210	132,611

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Refer to 50 CFR § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

Tables 11 and 12 list the proposed 2008 and 2009 AFA catcher vessel sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the proposed 2008 and 2009 sideboard limits listed in Table 11.

TABLE 11–PROPOSED 2008 AND 2009 AMERICAN FISHERIES ACT CATCHER VESSEL BSAI GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/ processor/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2008 and 2009 initial TAC[1]	2008 and 2009 AFA catcher vessel sideboard limits
Pacific cod	BSAI			
	Jig gear	0.0000	1,589	0
	Hook-and-line CV			
	Jan 1 - Jun 10	0.0006	115	0
	Jun 10 - Dec 31	0.0006	110	0
	Pot gear CV			
	Jan 1 - Jun 10	0.0006	4,826	3
	Sept 1 - Dec 31	0.0006	4,637	3
	CV < 60 feet LOA using hook-and-line or pot gear	0.0006	2,253	1
	Trawl gear CV			
	Jan 20 - Apr 1	0.8609	18,557	15,976
	Apr 1 - Jun 10	0.8609	2,759	2,375
	Jun 10 - Nov 1	0.8609	3,762	3,239
Sablefish	BS trawl gear	0.0906	1,263	114
	AI trawl gear	0.0645	596	38
Atka mackerel	Eastern AI/BS			
	Jig gear	0.0031	142	0
	Other gear			
	Jan 1 - Apr 15	0.0032	7,787	25
	Sept 1 - Nov 1	0.0032	7,787	25
	Central AI			
	Jan - Apr 15	0.0001	9,823	1
	HLA limit	0.0001	5,894	1
	Sept 1 - Nov 1	0.0001	9,823	1
	HLA limit	0.0001	5,894	1
	Western AI			
	Jan - Apr 15	0.0000	6,831	0
	HLA limit	n/a	4,099	0
	Sept 1 - Nov 1	0.0000	6,831	0
	HLA limit	n/a	4,099	0
Yellowfin sole[2]	BSAI	0.0647	131,950	n/a
Rock sole	BSAI	0.0341	66,975	2,284
Greenland turbot	BS	0.0645	1,462	94
	AI	0.0205	655	13
Arrowtooth flounder	BSAI	0.0690	25,500	1,760
Alaska plaice	BSAI	0.0441	51,000	2,249

Species	Fishery by area/season/ processor/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2008 and 2009 initial TAC[1]	2008 and 2009 AFA catcher vessel sideboard limits
Other flatfish	BSAI	0.0441	18,190	802
Pacific ocean perch	BS	0.1000	3,468	347
	Eastern AI	0.0077	4,376	34
	Central AI	0.0025	4,465	11
	Western AI	0.0000	6,805	0
Northern rockfish	BSAI	0.0084	7,539	63
Shortraker rockfish	BSAI	0.0037	392	1
Rougheye rockfish	BSAI	0.0037	187	1
Other rockfish	BS	0.0048	383	2
	AI	0.0095	497	5
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	49,313	2,668
Flathead sole	BS trawl gear	0.0505	40,185	2,029

[1] Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2008 and 2009 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt. See 72 FR 52668, 52726 (September 14, 2007).

Halibut and crab PSC listed in Table 12 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the proposed 2008 and 2009 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and (e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2008 and 2009 PSC sideboard limit listed in Table 12 is reached. The PSC caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species"' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 12–PROPOSED 2008 AND 2009 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI

[Amounts are in metric tons]

PSC species	Target fishery category[2]	AFA catcher vessel PSC sideboard limit ratio	Proposed 2008 and 2009 PSC limit after subtraction of PSQ reserves[1]	Proposed 2008 and 2009 AFA catcher vessel PSC sideboard limit[1]
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish[3]	n/a	n/a	228
	Turbot/Arrowtooth/Sablefish	n/a	n/a	0
	Rockfish (June 1 - December 31)	n/a	n/a	2
	Pollock/Atka mackerel/other species	n/a	n/a	5
Red king crab Zone 1[4]	n/a	0.299	175,921	52,600
C. opilio COBLZ[4]	n/a	0.168	3,884,550	652,604
C. bairdi Zone 1[4]	n/a	0.33	875,140	288,796
C. bairdi Zone 2[4]	n/a	0.186	2,652,210	493,311

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[3] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[4] Refer to 50 CFR § 679.2 for definitions of areas.

Classification

NMFS has determined that the proposed specifications are consistent with the FMP and preliminarily determined that the proposed specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. Copies of the Final EIS and ROD for this action are available from NMFS (see ADDRESSES). The Final EIS analyzes the environmental consequences of the proposed action and its alternatives on resources in the action area. The Final EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by Section 603 of the Regulatory Flexibility Act. The IRFA evaluates the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the Exclusive Economic Zone (EEZ) off of Alaska. While the specification numbers may change from year to year, the harvest strategy for establishing those numbers remains the same. NMFS therefore is using the same IRFA prepared in connection with the EIS. NMFS published notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 15, 2006 (71 FR 75460). The comment period on the BSAI proposed harvest specifications and IRFA ended on January 16, 2007. NMFS did not receive any comments on the IRFA.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble above. This IRFA meets the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 810 small catcher vessels, fewer than 20 small catcher/processors, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the EEZ of the BSAI and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if their annual gross receipts

from all economic activities, including the revenue of their affiliated operations, totaled $4 million per year or less. Data from 2005 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the BSAI non-CDQ and CDQ sectors were used as indices of the potential impacts of the alternative harvest strategies on small entities. Revenues were projected to decline from 2006 levels in 2007 and 2008 under the preferred alternative due to declines in ABCs for economically key groundfish species.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI optimum yield, in which case TACs would have been limited to the optimum yield. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs to equal the lower limit of the BSAI optimum yield range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the ''no action'' alternative.

Alternatives 3, 4, and 5 produced smaller first wholesale revenue indices for both non-CDQ and CDQ sectors than Alternative 2. Alternative 1 revenues were the same as Alternative 2 revenues in the BSAI for both sectors. Moreover, higher Alternative 1 TACs are associated with maximum permissible ABCs, while Alternative 2 TACs are associated with the ABCs that have been recommended to the Council by the Plan Team and the SSC, and more fully consider other potential biological issues. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS (see **ADDRESSES**).

Authority: 16 U.S.C. 773, *et seq.*, 1801, *et seq.*, 3631, *et seq.*; Pub. L. 108–447.

Dated: November 29, 2007

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–5943 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 72, No. 234
Thursday, December 6, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Medford Aspen Project; Chequamegon-Nicolet National Forest, Taylor County, WI

AGENCY: Forest Service, USDA

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District intends to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental effects of proposed land management activities, and corresponding alternatives within the Medford Aspen project area. This notice revises the ''responsible official'' and updates the expected statement dates.

DATES: The draft environmental impact statement is expected in February 2008 and the final environmental impact statement is expected in May 2008.

Responsible Official: This Notice also revises the responsible official from Chequamegon-Nicolet National Forest, Forest Supervisor to: Bob Hennes, Medford-Park Falls District Ranger, Chequamegon-Nicolet National Forest, Park Falls, Wisconsin.

ADDRESSES: Send written comments to Bob Hennes, c/o Jane Darnell, Medford-Park Falls Ranger District, 850 N. 8th St., Medford, Wisconsin 54451. Send electronic comments to: j*darnell01@fs.fed.us* with a subject line that reads ''Medford Aspen Project''.

FOR FURTHER INFORMATION CONTACT: Jane Darnell, Project Leader, Medford-Park Falls Ranger District, 850 N. 8th St., Medford, WI 54451: telephone 715–748–4875 (or TTY: 711, National Relay System), e-mail jdarnell01@fs.fed.us. Another means of obtaining information is to visit the Medford Aspen Web site at: *http://www.fs.fed.us/r9/cnnf/natres/eis/mpf/medford_aspen/index.html*.

SUPPLEMENTARY INFORMATION: The original notice of intent to prepare the Medford Aspen environmental impact statement was published in the **Federal Register** on June 26, 2007 (Vol. 72, No. 122, pages 35029–35030, Tuesday, June 26, 2007/Notices).

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 28, 2007.

Jeanne Higgins,

Forest Supervisor.

[FR Doc. E7–23650 Filed 12–5–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Rocky Mountain Region, USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: The Colorado Recreation Resource Advisory Committee will tentatively meet in Lakewood CO. The purpose of the meeting is to provide the new committee members with the information they will need to be effective committee members. This will include briefings on the Federal Lands Recreation Enhancement, the Federal Advisory Committee Act and other legal requirements as needed. The committee will also elect a chairperson, develop the bylaws and other operating procedures.

DATES: The meeting will be held December 10, 2007 from 1 p.m.–5 p.m. and December 11, 2007 from 9 a.m.–finished. This meeting will only be held if a quorum is present.

ADDRESSES: The meeting will be in the Forest Service Rocky Mountain Regional Office Auditorium, at 740 Simms Street, Golden, CO. Send written comments to Greg Griffith, Designated Federal Official, 740 Simms Street, Golden, CO 80401 or *ggriffith@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Pam DeVore, Colorado Recreation Resource Advisory Committee Coordinator, at 303–275–5043 or *pdevore@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. This meeting will be the initial meeting of the committee and the agenda will consist of committee organization needs, election of a Chairperson, development of the Charter and By Laws, as well as any other needed committee working processes. Specific fee issues will not be discussed.

Committee discussion is limited to Forest Service, Bureau of Land Management staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by October 24, 2007 will have the opportunity to address the Committee at the meeting.

Check for the status of the meeting at: *http://www.fs.fed.us/r2/recreation*.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: November 28, 2007.

Greg Griffith,

Colorado Recreation Resource Advisory Committee.

[FR Doc. 07–5933 Filed 12–5–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites—Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Rogue River—Siskiyou National Forest, USDA Forest Service.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Rogue River—Siskiyou National Forest is planning to charge fees at four new recreational-rental facilities. All four sites are Forest Service structures that are listed on the National Register of Historic Places; each of them has recently been repaired/restored and has had amenities added to improve services and experiences. Big Elk Guard Station, Lodgepole Guard Station, and Hershberger Mountain

Lookout (all located on the High Cascades Ranger District) will become available for overnight rental; Squaw Peak Lookout (on the Siskiyou Mountains Ranger District) will also become available for overnight rental. Although different at each site, the new amenities range from electricity (Big Elk) and running water/indoor toilet (Lodgepole) to vault toilets, working fireplaces, horse paddocks, and/or road-access improvements. The range of fees stated here is only proposed, and the actual fee for each site will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

A financial analysis is being done to determine the rental fees, but they may range between $40 and $80 per night. The Rogue River—Siskiyou National Forest currently has ten other rental cabins or lookouts, and they are often booked up during the recreation season. The fees would continue to help preserve these particular structures and maintain their historic integrity.

DATES: New fees would begin after May 2008 and contingent upon completion of certain improvements. The rentals would be available once a final decision is made and they are listed with the National Recreation Reservation Service.

ADDRESSES: Scott Conroy, Forest Supervisor, Rogue River—Siskiyou National Forest, 333 West 8th St., Medford, Oregon 97501.

FOR FURTHER INFORMATION CONTACT: John Borton, Recreation Fee Coordinator, 541–858–2300. Information about proposed fee changes can also be found on the Rogue River—Siskiyou National Forest Web site: *http://www.fs.fed.us/r6/rogue-siskiyou*.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Once in operation, people wanting to rent Big Elk Guard Station, Lodgepole Guard Station, Hershberger Mountain Lookout, or Squaw Peak Lookout would need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777.

Dated: November 27, 2007.

Scott Conroy,

Forest Supervisor.

[FR Doc. E7–23648 Filed 12–5–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of the Tenth Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 15, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') for Guangxi Jisheng Foods, Inc. (''Jisheng''). *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review,* 72 FR 45734 (August 15, 2007) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*, but we did not receive any comment. Also, we find after reviewing the record evidence submitted by interested parties after the *Preliminary Results* that there is no other basis to change the *Preliminary Results.* Therefore, we made no changes to the dumping margin calculations for these final results.

DATES: *Effective Dates:* December 6, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* for this administrative review were published on August 15, 2007. Since the *Preliminary Results,* the following events have occurred:

Questionnaires

On August 30, 2007, the Department issued a post-preliminary results supplemental questionnaire to Jisheng. On September 12, 2007, Jisheng requested a two-day extension to respond to the Department's August 30, 2007, supplemental questionnaire. On September 12, 2007, the Department granted Jisheng an extension of two days to submit its response to the August 30, 2007, questionnaire. On September 14, 2007, Jisheng submitted its post-preliminary results supplemental questionnaire response.

Verification

On September 12, 2007, the Department issued the verification schedule of Jisheng. On October 5, 2007, the Department issued the outline of the verification of Jisheng that was scheduled for October 22 through 24, 2007. On October 18, 2007, the Department notified interested parties that the verification of Jisheng had been cancelled.

Case Briefs and Rebuttal Briefs

On October 3, 2007, because the Department had extended the final results of this new shipper review and intended to verify Jisheng, the Department extended the deadline for interested parties to submit case briefs and rebuttal briefs. The Department extended the deadline for case briefs from September 14, 2007 to November 14, 2007, and rebuttal briefs from September 19, 2007 to November 19, 2007.

On October 18, 2007, the Department notified interested parties that, due to the cancellation of Jisheng's verification, the deadline to submit case briefs was November 1, 2007. Additionally, the deadline to submit rebuttal briefs was changed to November 6, 2007.

Hearing

No party requested a hearing for this new shipper review.

Extension of Final Results

On September 27, 2007, the Department extended the time limit for completion of the final results of the instant new shipper review. *See Certain Preserved Mushrooms From the People's Republic of China: Extension of Time Limit for the Final Results of the Tenth Antidumping Duty New Shipper Review,* 72 FR 54899 (September 27, 2007).

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and

sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

No interested parties submitted comments for these final results.

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results.*

Final Results of Review

We find that the following margin exists during the period February 1, 2006, through September 12, 2006:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter/ manufacturer	Weighted-average margin (percent)
Guangxi Jisheng Foods, Inc.	0.00

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Jisheng to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these results of the new shipper review for all shipments of subject merchandise from Jisheng entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise produced and exported by Jisheng, no cash deposit will be required; (2) for subject merchandise exported by Jisheng but not manufactured by itself, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Jisheng but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These requirements will remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(h).

Dated: November 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23688 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–DS–P

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States*, 396 F.3d 1378 (Fed. Cir. 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On November 28, 2007 the binational panel issued its decision in the review of the 2nd Administrative Review made by the International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod from Canada, Secretariat File No. USA–CDA–2006–1904–04. The binational panel remanded a portion of the decision to the Import Administration with a partial dissenting opinion and a further dissent. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a

mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel remanded the International Trade Administration's final determination respecting Carbon and Certain Alloy Steel Wire Rod from Canada with a partial dissenting opinion and a further dissent. The panel remanded the opinion as follows:

1. On the issue of the permissibility of zeroing, the Panel remands this matter back to Commerce to re-calculate Mittal's dumping margins without zeroing.

2. On the issue of the significance of the actual cost increases, the Panel remands the question of the significance of the cost increase back to Commerce for a reasoned explanation of its decision, based on the record and corrected for any errors in calculation of costs that may have been made in the original decision. At a minimum, the revised determination should include a description of the criteria that Commerce applied and an explanation of how Commerce decided on the significance or lack thereof of the cost increases in this case.

3. On the issue of the consistency of the cost increases between the two cost periods proposed by Mittal, this Panel remands this matter back to Commerce to clarify what is its test for consistent cost increases in this case, to explain why that test is reasonable and to provide a reasoned explanation of whether Mittal's costs met that test in this case.

4. On the issue of the linkage between changes in costs and prices, this Panel also remands this matter back to Commerce to provide a reasoned description and explanation of its linkage test, to apply that test to the costs and prices in this case, and to provide a reasoned explanation of whether Mittal has actually met this linkage test in its proposed cost periods in this case.

Commerce is further directed to issue its Final Re-determination on Remand within forty-five days from the date of this Panel Decision or by January 14, 2008.

Dated: December 3, 2007.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. E7–23684 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On November 21, 2007, The United States Steel Corporation (''U.S. Steel'') filed a First Request for Panel Review with the United States section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Determination of the Antidumping Duty Review made by the International Trade Commission, respecting Certain Welded Large Diameter Line Pipe from Mexico. This determination was published in the **Federal Register** (72 FR 59551) on October 22, 2007. The NAFTA Secretariat has assigned Case Number USA–MEX–2007–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 6, 2007, requesting panel review of the Notice of Final Antidumping Changed Circumstances Review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 21, 2007);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 7, 2008); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 3, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–23686 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE16

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops.

SUMMARY: NMFS announces free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in January, February, and March 2008. Fishermen and shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2008 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshops will be held January 10 and March 13, 2008.

The Protected Species Safe Handling, Release, and Identification Workshops will be held January 9, 16, February 20, and March 19, 2008.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Fairhope, AL, and South Boston, MA.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Myrtle Beach, SC; Houston, TX; Key West, FL; and Boston, MA.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION:

The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to an Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location has been submitted with the permit renewal application. Sixteen free Atlantic Shark Identification Workshops were held in 2007.

Workshop Dates, Times, and Locations

1. January 10, 2008, from 9:30 a.m. – 3 p.m. Fairhope Public Library, 501 Fairhope Avenue, Fairhope, AL 36532.

2. March 13, 2008, from 12:30 p.m. – 5 p.m. South Boston Public Library, 646 East Broadway, South Boston, MA 02127.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species–specific dealer–reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshop

Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners who have not attended a workshop and received a NMFS certificate must attend one of the workshops offered in January, February, or March 2008 to fish with or renew either permit. Additionally, new shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification Workshop. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times. Seven free Protected Species Safe Handling, Release, and Identification Workshops were held in 2006, and 34 were held in 2007.

Workshop Dates, Times, and Locations

1. January 9, 2008, from 9 a.m. – 5 p.m. Hilton Myrtle Beach Resort, 10000 Beach Club Drive, Myrtle Beach, SC 29572.

2. January 16, 2008, from 9 a.m. – 5 p.m. Houston Airport Marriott , 18700 John F. Kennedy Boulevard, Houston, TX 77032.

3. February 20, 2008, from 9 a.m. – 5 p.m. Doubletree Grand Key Resort, 3990 South Roosevelt Boulevard, Key West, FL 33040.

4. March 19, 2008, from 9 a.m. – 5 p.m. Doubletree Guest Suites Boston, 400 Soldiers Field Road, Boston, MA 02134.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact

Aquatic Release Conservation ((877) 411–4272), 1870 Mason Ave., Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co–owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The protected species safe handling, release, and identification workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry–sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid NOAA workshop certificate may result in a permit denial.

Dated: December 3, 2007.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–23697 Filed 12–5–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Request for Comment on Exemption Requests

AGENCY: Commodity Futures Trading Commission.

Requests to extend, pursuant to the exemptive authority in section 4(c) of the Commodity Exchange Act, the exemption granted under Part 35 of the Commission's regulations to certain over-the-counter swaps that do not otherwise meet certain of the requirements imposed by Commission Regulation 35.2 and to determine that, subject to certain conditions, floor brokers and floor traders are eligible swap participants.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is requesting comment on whether to extend the exemption granted under Part 35 of the Commission's regulations to certain over-the-counter (''OTC'') swaps that do not meet certain of the requirements otherwise imposed by Commission Regulation 35.2. This exemption has been requested by ICE Clear U.S., Inc. (''ICE Clear''), a registered derivatives clearing organization. The Commission is also requesting comment on whether ICE Futures U.S., Inc. (''ICE Futures U.S.'') floor traders and floor brokers who are registered with the Commission, when trading for their own accounts, may be determined to be eligible swap participants and permitted to enter into certain specified OTC swap transactions. This exemption has been requested by ICE Futures U.S., a designated contract market. Authority for extending this relief is found in Section 4(c) of the Commodity Exchange Act (''CEA'' or ''Act'').[1]

DATES: Comments must be received on or before January 7, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''ICE Clear Section 4(c) Request'' in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Special Counsel, 816–960–7719, *lgregory@cftc.gov*, or Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov*, Division of Clearing and Intermediary Oversight; or Duane C. Andresen, Special Counsel, 202–418–5492, *dandresen@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. The ICE Clear Petition

ICE Clear, the clearing organization for ICE Futures U.S., seeks to offer eligible swap participants who enter into certain bilateral swap transactions involving coffee, sugar, or cocoa the opportunity to submit them to ICE Clear for clearing. ICE Clear has represented that swap transactions in various agricultural products, including coffee, sugar, and cocoa, currently trade in OTC markets exempt from provisions of the CEA pursuant to Part 35 of the Commission's regulations. These are commonly swap agreements entered into by participants exchanging fixed for floating reference prices. Participants in these markets include trade houses, commodity lenders, producers, end users, and large speculators.

Part 35 of the Commission's regulations [2] exempts swap agreements and eligible persons entering into these agreements from most provisions of the Act.[3] The term ''swap agreement'' is defined to include, among other types of agreements, ''a * * * commodity swap,'' [4] which latter term includes swaps on agricultural products.[5] Part 35 was promulgated pursuant to authority provided to the Commission in Section 4(c) of the Act to exempt certain transactions in order to promote innovation and competition.[6] Various exemptions and exclusions were subsequently added to the Act by the Commodity Futures Modernization Act

[1] 7 U.S.C. § 6(c).

[2] 17 CFR Part 35.

[3] Jurisdiction is retained for, *inter alia*, provisions of the CEA proscribing fraud and manipulation. *See* Commission Reg. § 35.2, 17 CFR § 35.2 (Commission regulations are hereinafter cited as ''Reg. § _'').

[4] Reg. § 35.1(b)(1)(i).

[5] ''Commodity'' is defined in Section 1a(4) of the Act to include a variety of specified agricultural products, ''and all other goods and articles, except onions * * * and all services, rights and interests in which contracts for future delivery are presently or in the future dealt in.''

[6] *See* 58 F.R. 5587 (January 22, 1993).

of 2000 (''CFMA''),[7] but none apply to agricultural contracts.[8]

Part 35 requires, *inter alia*, that a swap agreement not be part of a fungible class of agreements that are standardized as to their material economic terms[9] and that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the terms of the agreement.[10] Under the arrangement that ICE Clear seeks to establish, OTC contracts would be submitted for clearing, a process that would extinguish the original OTC contract and replace it with an equivalent number of cash-settled ''cleared-only'' futures contracts, with the clearinghouse interposed as central counterparty.[11] A cleared-only contract could be offset by another cleared-only contract. Thus, clearing of these OTC contracts would result in contracts that are fungible with other cleared-only contracts with approximately equivalent terms. In addition, the creditworthiness of the counterparty would not be a consideration. Accordingly, the OTC contracts ICE Clear would clear in the fashion proposed would not fulfill all of the conditions of Part 35.

However, Part 35 further invites ''any person [to] apply to the Commission for exemption from any of the provisions of the Act * * * for other arrangements or facilities.'' ICE Clear has petitioned the Commission for an order under Section 4(c) of the Act that would permit cleared OTC swaps involving coffee, sugar, and cocoa to be exempt on the same basis as other swaps are exempt under Part 35.

II. The ICE Futures U.S. Petition

ICE Futures U.S. seeks to permit floor traders and floor brokers (collectively, floor members) who are registered with the Commission, when trading for their own accounts, to enter into the OTC swap transactions discussed above. Part 35, however, defines the term eligible swap participant (''ESP'') to include floor members only as follows: (1) Floor members generally who are other than natural persons or proprietorships; (2) floor members who are natural persons, provided they have total assets exceeding at least $10,000,000; or (3) floor members who are proprietorships, provided they have total assets exceeding at least $10,000,000, or have the obligations under the swap agreement guaranteed or otherwise supported by certain other ESPs, or have a net worth of $1,000,000 and enter into the swap agreement in connection with the conduct of their business or to manage the risk of an asset or liability owned or incurred in the conduct of their business or reasonably likely to be owned or incurred in the conduct of their business.[12] ICE Futures U.S. has petitioned the Commission for an order under Section 4(c) of the Act that would permit all ICE Futures U.S. floor members who are registered with the Commission, when trading for their own accounts, to be ESPs for the purpose of entering into bilateral swap transactions involving agricultural commodities as described above.

ICE Futures U.S. represents that all floor members entering into the swap transactions would be sophisticated and knowledgeable in the relevant products and markets and would be fully capable of evaluating the transactions. Further, because the transaction results in a cleared-only futures contract, floor members would not be subject to counterparty credit risk and would rely on the credit of ICE CLEAR and their clearing futures commission merchants (''FCMs'').

The Commission anticipates that any Section 4(c) order issued in response to this request would be subject to the following conditions:

(1) The contracts, agreement or transactions would have to be executed pursuant to the requirements of Part 35, as modified herein.

(2) The ICE Futures U.S. floor member would have to obtain a financial guarantee for the OTC swap transactions from an ICE Futures U.S. clearing member that:

(i) Is registered with the Commission as an FCM; and

(ii) Clears the OTC swap transactions thus guaranteed.

(3) Permissible OTC swap transactions would be limited to ''cleared-only'' contracts in the following eligible products: cocoa, coffee and sugar.

(4) Permissible OTC swap transactions would have to be submitted for clearance by an ICE Futures U.S. clearing member to ICE Clear pursuant to ICE Clear Rules.

(5) An ICE Futures U.S. floor member could not enter into OTC swap transactions with another ICE Futures U.S. floor member as the counterparty for ICE Clear ''cleared-only'' contracts.

(6) ICE Futures U.S. would maintain appropriate compliance systems in place to monitor the OTC swap transactions of its floor members.[13]

III. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[14] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective

[7] *Pub.* L. 106–554, 114 Stat. 2763 (2000).

[8] *See, e.g.*, CEA §§ 2(d), (g) and (h).

[9] Reg. § 35.2(b).

[10] Reg.§ 35.2(c).

[11] The OTC transaction would be required to involve the coffee, sugar, or cocoa underlying the corresponding cleared-only contract. The unit size, quality, and other specifications for the OTC coffee, sugar, or cocoa transaction would be approximately equivalent to the unit size, quality, and other specifications of the corresponding physical delivery futures contract listed on ICE Futures.

[12] Reg. § 35.1(b)(2)(x).

[13] These conditions are substantially similar to the conditions included in two previously issued Commission orders that permit floor members to be eligible contract participants (''ECPs'') pursuant to Section 1a(12)(C) of the Act, 7 U.S.C. 1a(12)(C). On March 14, 2006, the Commission issued an order that permitted Chicago Mercantile Exchange floor members to be ECPs with respect to OTC transactions in excluded commodities entered into pursuant to Section 2(d)(1) of the Act. On August 3, 2006, the Commission issued an order that permitted New York Mercantile Exchange floor members to be ECPs with respect to OTC transactions in exempt commodities entered into pursuant to Section 2(h)(1) of the Act.

[14] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

and competitive manner.''[15] Permitting the clearing of OTC coffee, sugar, and cocoa transactions by ICE Clear, as well as permitting ICE Futures U.S. floor members to trade such products, as discussed above, may foster both financial innovation and competition. It may benefit the marketplace by providing ESPs the ability to bring together flexible negotiation with central counterparty guarantees and capital efficiencies. The CFTC is requesting comment on whether it should exempt the OTC transactions in coffee, sugar, and cocoa that are proposed to be cleared through ICE Clear as described above, in the same fashion as are other contracts that are exempt pursuant to Part 35 of the Commission's regulations. The CFTC is also requesting comment on whether it should determine ICE Futures U.S. floor members, subject to certain conditions, to be ESPs for the purpose of entering into the OTC transactions in coffee, sugar and cocoa.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.[16]

The purposes of the CEA include ''promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants.'' [17] It may be consistent with these and the other purposes of the CEA, and with the public interest, for the OTC contracts described herein and submitted for clearing as described herein to be exempt as are other contracts under Part 35 of the Commission's regulations. However, the exception of agricultural commodities from the exemptions and exclusions provided under the CFMA for OTC transactions may be relevant to the analysis. Accordingly, the CFTC is requesting comment as to whether an exemption from the requirements of the CEA should be granted in the context of these transactions and these potential participants.

Section 4(c)(3) includes within the term ''appropriate persons'' a number of specified categories of persons deemed appropriate under the Act for entering into transactions exempt by the Commission under Section 4(c). This includes persons the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. ESPs, as defined in Part 35 of the Commission's regulations, will be eligible to submit for clearing to ICE Clear the OTC transactions described above. That definition includes many of the classes of persons explicitly referred to in CEA Section 4(c)(3) (*e.g.*, a bank or trust company) as well as some classes of persons who are included under the category of Section 4(c)(3)(K) (''[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections''). The Commission is proposing to include as appropriate persons for this extended relief under Part 35 all of the persons who meet the definition of ESP in Commission Regulation § 35.1(b)(2). For the purposes of the extended relief requested by ICE Futures U.S., the Commission is also proposing to expand upon this list of appropriate persons to include, as discussed above, ICE Futures U.S. floor members. The Commission seeks comment on this determination.

In light of the above, the Commission also is requesting comment as to whether these exemptions will affect its ability to discharge its regulatory responsibilities under the CEA, or with the self-regulatory duties of any contract market or derivatives clearing organization.

IV. Request for Comment

The Commission requests comment on all aspects of the issues presented by these exemption requests.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [18] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The exemption would not, if approved, require a new collection of information from any entities that would be subject to the exemption.

B. Cost-Benefit Analysis

Section 15(a) of the CEA,[19] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission is considering the costs and benefits of an exemptive order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* The contracts that are the subject of the exemptive request will only be entered into by persons who are ''appropriate persons'' as set forth in Section 4(c) of the Act.

2. *Efficiency, competition, and financial integrity.* Extending the exemption granted under Part 35 to

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[15] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[16] Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[17] CEA § *section* 3(b), 7 U.S.C. 5(b). *See* also CEA § *section* 4(c)(1), 7 U.S.C. § 6(c)(1) (purpose of exemptions is ''to promote responsible economic or financial innovation and fair competition'').

[18] 44 U.S.C. § 3507(d).

[19] 7 U.S.C. § 19(a).

these swap agreements to allow them to be cleared may promote liquidity and transparency in the markets for OTC derivatives on coffee, sugar, and cocoa, as well as on futures on those commodities. Extending the exemption also may promote financial integrity by providing the benefits of clearing to these OTC markets. Determining ICE Futures U.S. floor members to be ESPs may increase the flow of trading information between markets, increase the pool of potential counterparties for participants trading OTC, and provide essential trading expertise to the market.

3. *Price discovery*. Price discovery may be enhanced through market competition.

4. *Sound risk management practices*. Clearing of OTC transactions may foster risk management by the participant counterparties. ICE Clear's risk management practices in clearing these transactions would be subject to the Commission's supervision and oversight.

5. *Other public interest considerations*. The requested exemption may encourage market competition in agricultural derivative products without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the exemption requests as discussed above. The Commission also invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on November 30, 2007 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–23635 Filed 12–5–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0130]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 7, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 29, 2007 to the House Committee on Oversight and Government Reform, the Senate Committee on Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated December 12, 2000, 65 FR 239.

Dated: November 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7901

SYSTEM NAME:

Standard Finance and Accounting Payment System.

SYSTEM LOCATIONS:

Defense Information Systems Agency, Defense Enterprise Computing Center-St Louis, Post Office Box 20012, St. Louis, MO 63120–0012.

Defense Finance and Accounting Service—Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–2700.

Defense Finance Accounting Service—Columbus, 3990 East Broad Street, Building 21, Columbus OH 43213–2317.

Defense Finance and Accounting Service—Kansas City, 1500 E. Bannister Street, Kansas City, MO 64197–0001.

For a list of other DFAS, U.S. Army, and Marine Corps sites utilizing the system contact the Standard Finance System, Redesigned Subsystem, System Manager, Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, 8899 East 56th Street, Indianapolis, IN 46249–2700. Telephone number (317) 510–4003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members (Army and U.S. Marine Corps), Reserve and Guard military members, Army Military Academy cadets, Army Reserve Officer Training Corps (ROTC) students, DoD contractors, and vendors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home address, and military branch of service, military status, disbursing and accounting transaction data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5; 31 U.S.C. Sections 3511, 3512, and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

The system processes payments and collections utilizing the Electronic Funds Transfer system. It is a multi-functional, interactive, automated disbursing and accounting system composed of several functional modules that perform vendor pay, travel pay, and military payroll payment. Defense Finance and Accounting Service, U.S. Army, and Marine Corps will use the system for processing accounting and disbursing transactions in contingency locations requiring foreign currency operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, and destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, 8899 East 56th Street, Indianapolis, IN 46249–2700. Telephone number (317) 510–4003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Individual or DoD military components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–23666 Filed 12–5–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Device and Method for Determining All Components of the Stokes Polarization Vector Within a Radar Signal

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent No. 6,762,713 entitled ''A Device and Method for Determining All Components of the Stokes Polarization Vector within a Radar Signal,'' issued on July 13, 2004. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Office of Research and Technology Applications, SDMC–RDT–TL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil;* (256) 955–1501.

SUPPLEMENTARY INFORMATION: The invention pertains to measuring the polarization state of a wideband electromagnetic signal. A polarimeter includes a first antenna for receiving the electromagnetic signal and a modulator. The modulator is interconnected with the first antenna for modulating the electromagnetic signal. A modulated electromagnetic signal results that contains a different polarization state for each frequency of the electromagnetic signal, and wherein the amplitude of each frequency component of the modulated electromagnetic signal is a function of the particular polarization state of each frequency component of the electromagnetic signal. The modulator may be configured to modulate at a radar frequency. A linear polarizer passes a first predetermined polarization of the modulated electromagnetic signal through a first output thereof. A first receiver includes a detector for receiving and demodulating the modulated electromagnetic signal from the linear polarizer.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E7–23644 Filed 12–5–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant a Partially Exclusive Patent License to Linear Systems

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to grant to Linear Systems, a corporation having its principle place of business at 8403 Maple Place; Rancho Cucamonga, CA, 91730, a partially exclusive license relative to ARL patent application # 11/038,401 entitled, ''Method for Super Resolving Images''; January 19, 2005, *Inventor:* Shiqiong Susan Young.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than 15 days from the date of this notice.

ADDRESSES: Send written objections to Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: AMSRD–ARL–DP–P/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E7–23645 Filed 12–5–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Super-Resolution Image Reconstruction Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel Super-Resolution Image Reconstruction technology as described in U.S. Patent Application ''Method for Super Resolving Images'' (U.S. Patent Application No.11/038,401), January 19, 2005; *Inventor:* Shiqiong Susan Young. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, *Attn:* AMSRL–DP–T/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E7–23678 Filed 12–5–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0056]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 7, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01754–3

SYSTEM NAME:

Navy Child Development Services Program (May 31, 2006, 71 FR 30893).

CHANGES:

Delete ''N01754–3'' and replace with ''NM01754–3''

SYSTEM NAME:

Delete entry and replace with ''DON Child and Youth Program.''

SYSTEM LOCATION:

Delete entry and replace with ''Navy Child and Youth Program or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Navy and Marine Corps service members and their families or dependents. In certain locations, DoD civilian employees eligible for services may also be covered by the system.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete ''Family Child Care program'' and replace with ''Child Development Homes;''.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAV Instruction 1700.9 series, Child and Youth Programs; and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; and verify health status of children and verify immunizations.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In para 2, modify routine use to read ''To Federal officials involved in Child Care Services, including for child abuse reporting and investigation.''

In para 3, add ''child abuse'' in front of the word ''investigations.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper files and networked databases.''

RETRIEVABILITY:

Delete entry and replace with ''By the last name of the individual covered by the system and Social Security Number (SSN).''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In para 2, delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx.*''

NOTIFICATION PROCEDURE:

In para 1, delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx.*''

RECORD ACCESS PROCEDURES:

In para 1, delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx.*''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information in this system comes from individuals either applying as child care providers or as participants of the child development homes; background checks from State and local authorities or Naval Criminal Investigative Service; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled; and health care providers, employers, and others providing information identified in the categories of records in the system.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

After the words ''law enforcement purposes'' add ''contained in this system''.

* * * * *

NM01754–3

SYSTEM NAME:

DON Child and Youth Program.

SYSTEM LOCATION:

Navy Child and Youth Program or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families or dependents. In certain locations, DoD civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); case number; home address and telephone number; insurance coverage; names of parents and children; payment records; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Child Development Homes; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAV Instruction 1700.9 series, Child and Youth Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; and verify health status of children and verify immunizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information in this system comes from individuals either applying as child care providers or as participants of the child development homes; background checks from State and local authorities or Naval Criminal Investigative Service; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled; and health care providers, employers, and others providing information identified in the categories of records in the system.

To Federal officials involved in Child Care Services, including for child abuse reporting and investigation.

To State and local officials involved with Child Care Services if required in the performance of their official duties relating to child abuse investigations.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and networked databases.

RETRIEVABILITY:

By the last name of the individual covered by the system and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours. Computer files are protected by software programs that are password protected.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Installations, Millington Detachment (N23), 5720 Integrity Drive, Millington, TN 38055–6500.

RECORD HOLDER:

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Individuals should submit a signed request with provide proof of identity and full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Individuals should submit a signed request with proof of identity and full name.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from individuals either applying as child care providers or as participants of the child development homes; background checks from State and local authorities or Naval Criminal Investigative Service; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled; and health care providers, employers, and others providing information identified in the categories of records in the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes contained in this system may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. E7–23669 Filed 12–5–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0055]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 7, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

November 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05000–2

SYSTEM NAME:

Organization Management and Locator System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian, and contractor personnel attached to the activity; former members; applicants for civilian employment, visitors, volunteers, guests, and invitees; and dependent family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, correspondence, and databases needed to manage personnel, projects, and access to programs. Information consists of name; Social Security Number; date of birth; photo identification; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; trade; hire/termination dates; type of appointment; leave; location; assigned organization code and/or work center code; Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel. Information is used to prepare organizational locator, recall rosters, and social rosters; notify personnel of arrival of visitors; locate individuals on routine and/or emergency matters; locate individuals during medical emergencies, facility evacuations and similar threat situations; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; track attendance at training; identify routine and special work assignments; determine clearance for access control; identify record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; control the budget; travel claims; track manpower, grades, and personnel actions; maintain statistics for minorities; track employment; track labor costing; prepare watch bills; project retirement losses; verify employment to requesting banking activities; rental and credit organizations; name change location; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data.

To arbitrators and hearing examiners for use in civilian personnel matters relating to civilian grievances and appeals.

To authenticate authorization for access to services and spaces such as Morale, Welfare, and Recreation (MWR) facilities and food services.

To identify individuals who wish to participate in a mentoring program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, electronic records, databases, and/or web based tool.

RETRIEVABILITY:

Name, Social Security Number (SSN), employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–23671 Filed 12–5–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–2–000]

Bonneville Power Administration; Notice of Filing

November 29, 2007.

Take notice that on November 26, 2007, Bonneville Power Administration (Bonneville) filed a petition of declaratory order requesting the Commission to find that the terms and conditions of two unexecuted Long-Term Firm Point-to-Point Transmission Service Agreements between Bonneville and Caithness Shepherds Flat, LLC, for service over Bonneville's transmission system commencing November 1, 2007, and December 1, 2007, are consistent with its Open Access Transmission Tariff (OATT), and that the service commencement dates are the appropriate dates under the OATT.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23629 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2426–197]

California Department of Water Resources and the City of Los Angeles; Notice Denying Late Intervention

November 28, 2007.

On June 8, 2005, the Commission issued a public notice of California Department of Water Resources' (California DWR) and the City of Los Angeles' application to amend their license for the California Aqueduct Project No. 2426. On June 11, 2007, Friends of the River filed a late motion to intervene in the proceeding.

In determining whether to grant late intervention, the Commission may consider such factors as whether the movant had good cause for filing late, whether the movant's interest is adequately represented by other parties to the proceeding, and whether granting the intervention might result in disruption to the proceeding or prejudice to other parties.[1] Movants for late interventions must, among other things, demonstrate good cause why the time limit should be waived.[2]

Friends of the River argues that good cause exists for late intervention because it had no actual notice of the deadline for motions to intervene. It states that it only became aware of the deadline when the Commission issued the Environmental Assessment (EA) for the proposed license amendment on March 1, 2007. Friends of the River also argues that even if it had received actual notice of the deadline, it still would not have known of its actual need to become a party in the proceeding until the Commission issued its environmental determinations in the EA.

Movant's assertions are without merit. The Commission issued public notice of

[1] 18 CFR 385.214(d) (2007).

[2] 18 CFR 385.214(b)(3) (2007).

the amendment application on June 8, 2005, and published notice in the **Federal Register** on June 15, 2005.[3] Movant therefore was on notice of licensee's application, but failed to timely respond to it.[4] Allowing late intervention at this point in the proceedings would create prejudice and additional burdens on the Commission and its applicants.

The Commission expects parties to intervene in a timely manner based on the reasonably foreseeable issues arising from the applicant's filings and the Commission's notice of proceedings.[5] The Commission has held that the party bears the responsibility for determining when a proceeding is relevant to its interests, such that it should file a motion to intervene. When a party fails to intervene in a timely fashion, the party assumes the risk that the case will be settled in a manner that is not to its liking.[6] The Commission has previously explained that an entity cannot ''sleep on its rights'' and then seek untimely intervention.[7] Therefore, Friends of the River's argument that it would not have known of its actual need to become a party in the proceeding until the Commission issued its environmental determinations in the EA is without merit.

Movant has failed to demonstrate good cause standard for granting late intervention. The motion for late intervention in these proceedings filed by movant is therefore denied.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2007).

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23622 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

[3] 70 FR 34,750 (2005).

[4] *See Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380 (1947) (holding that **Federal Register** publication provides notice to all affected parties).

[5] *See California Water Resources Department and the City of Los Angeles,* 120 FERC ¶ 61,057 at n.9 (2007).

[6] *Id.* at P 13.

[7] *Id.* at P 14.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR08–3–000]

CKB Petroleum, Inc.; Notice of Request for Temporary Waiver of Tariff Filing and Reporting Requirements

November 29, 2007.

Take notice that on November 15, 2007, CKB Petroleum, Inc. (CKB) tendered for filing an application for temporary waiver of the Interstate Commerce Act section 6 and section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines.

In support thereof, CKB states that it owns and undivided interest in a pipeline that runs from South Pass in Federal waters, offshore Louisiana, to the West Delta Receiving Station in Venice, Louisiana, through which it has transported crude oil exclusively for its parent company. CKB further states that despite having an effective tariff on file with the Commission since March 1, 1985, it has never received a request for service from an unaffiliated third party.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 11, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23630 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–5–000]

Consumers Energy Company; Notice of Petition for Rate Approval

November 28, 2007.

Take notice that on November 20, 2007, Consumers Energy Company (Consumers) filed a petition for approval of rates for interruptible transportation services, pursuant to section 284.123(b)(2) of the Commission's regulations. Consumers requests that the Commission approve an interruptible transportation rate of $0.2623 per Dth plus up to 1.10% for fuel and lost and unaccounted for gas. Consumers states that the current interruptible transportation rate is $0.1429 per Dth plus up to 2.29% for fuel and lost and unaccounted for gas. The Commission's April 21, 2005 letter order required Consumers to make an informational filing of cost and throughput data on or before November 24, 2007 or file a petition for rate approval pursuant to section 284.123(b)(2).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest

on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23624 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–22–000]

DCP Midstream, LP; Notice of Petition for Declaratory Order

November 28, 2007.

Take notice that on November 13, 2007, DCP Midstream, LP (DCP Midstream) 370 17th Street, Suite 2500, Denver, Colorado 80202 filed in Docket No. CP08–22–000, under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2007), a petition for a declaratory order requesting that the Commission disclaim jurisdiction over certain natural gas facilities DCP Midstream would purchase from Transcontinental Gas Pipe Line Corporation (Transco),[1] because such facilities perform a gathering function and would be exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act.

DCP Midstream states that it would purchase Transco's South Texas facilities, consisting of approximately 135.6 miles of natural gas pipelines and related meter stations, valves, miscellaneous field and tie-in piping, other appurtenances along the pipeline segments, and related realty and easement rights. These facilities would handle unprocessed natural gas in Hidalgo, Willacy, Starr, Brooks, and Jim Wells Counties, Texas, and would be incorporated into DCP Midstream's existing south Texas gathering facilities for processing at DCP Midstream's LaGloria Processing Plant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23618 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Transco filed an application with the Commission in Docket No. CP08–25–000 on November 13, 2007, requesting permission and approval to abandon the subject facilities by sale to DCP Midstream.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1247–000; ER07–1247–001; ER07–1247–002]

FC Energy Services Company, LLC; Notice of Issuance of Order

November 28, 2007.

FC Energy Services Company, LLC (FC Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. FC Energy also requested waivers of various Commission regulations. In particular, FC Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FC Energy.

On November 28, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by FC Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is December 28, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, FC Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FC Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of FC Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23620 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–66–012]

Louisiana Public Service Commission; The Council of the City of New Orleans v. Entergy Corporation; Notice of Filing

November 29, 2007.

Take notice that on November 19, 2007, Entergy Services, Inc., acting as agent for Entergy Operating Companies, filed a refund report in compliance with the Commission's September 20, 2007 Order, *Louisiana Public Service Commission and the Council of the City of New Orleans* v. *Entergy Corporation,* 120 FERC ¶ 61,241 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23627 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES07–52–000]

Northern Indiana Public Service Company; Notice of Filing

November 28, 2007.

Take notice that on October 5, 2007, Northern Indiana Public Service Company tendered for filing certified copies of documents to their July 31, 2007 application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23621 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1332–000; ER07–1332–001; ER07–1332–002]

Smoky Hills Wind Farm, LLC; Notice of Issuance of Order

November 29, 2007.

Smoky Hills Wind Farm, LLC (Smoky Hills Wind Farm) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Smoky Hills Wind Farm also requested waivers of various Commission regulations. In particular, Smoky Hills Wind Farm requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Smoky Hills Wind Farm.

On November 29, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by

Smoky Hills Wind Farm, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is December 31, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Smoky Hills Wind Farm is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issuance or assumption is for some lawful object within the corporate purposes of Smoky Hills Wind Farm, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Smoky Hills Wind Farm's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23628 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–15–000; PF07–9–000]

Steckman Ridge, LP; Notice of Application

November 28, 2007.

Take notice that on November 1, 2007, Steckman Ridge, LP (Steckman Ridge), 5400 Westheimer Court, Houston, Texas 77251, pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, filed an abbreviated application for certificates of public convenience and necessity, seeking authority to own, operate, construct, install, and maintain a natural gas storage field and related facilities in Bedford County, Pennsylvania; to provide open-access firm and interruptible storage services in interstate commerce at market-based rates under 18 CFR Part 284, Subpart G; and to undertake the limited construction and operation activities permitted under 18 CFR Part 157, Subpart F. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport or call toll-free, (866) 208-3676, or for TTY, (202) 502–8659.

Specifically, Steckman Ridge requests authorization to: (i) Convert five existing production wells to storage wells; (ii) construct, own, and operate 18 additional storage wells, approximately 7.49 miles of 16-inch diameter pipeline and 3.6 miles of 6- and 8-inch diameter pipeline that will comprise the Storage Field Pipeline Network, one 9,470 horsepower compressor station, and associated above-ground facilities; and (iii) charge market-based rates for the storage and hub services that will be provided by the project.

Any questions regarding this application should be directed to Garth Johnson, Steckman Ridge, LP, PO Box 1642, Houston, Texas 77251 at (713) 627–5415.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right

to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: December 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23617 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–445–001; CP07–445–002]

Transcontinental Gas Pipe Line Corporation; Southern Natural Gas Company; Notice of Compliance Filing

November 28, 2007.

Take notice that on November 6, 2007, Transcontinental Gas Pipe Line Corporation (Transco) and on November 8, 2007, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an effective date of October 31, 2007:

Transco,
Twenty-Six Revised Sheet No. 1,
First Revised Sheet No. 1572.

Southern, First Revised Sheet No. 432.

Transco and Southern state that the filings are being made in compliance with the Commission's order issued on October 31, 2007 in the above referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 3, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23616 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–25–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

November 28, 2007.

Take notice that on November 13, 2007, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP08–25–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for permission and approval to abandon by sale to DCP Midstream, LP (DCP Midstream),[1] Transco's onshore pipeline facilities in South Texas upstream of Transco's La Gloria lateral in Jim Wells County, Texas, and to abandon the related transportation and exchange services, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Transco proposes to abandon by sale to DCP Midstream and that DCP Midstream has agreed to purchase Transco's 100 percent undivided ownership interest in the following facilities, referred to as the ''South Texas facilities'': (1) The South Texas central line between milepost 0.00 and 78.89, which consists of 37.63 miles of 10-inch diameter pipeline and 41.26 miles of 14-inch diameter pipeline; (2) the Starr lateral and loop, which consists of 23.17 miles of 10-inch diameter pipeline and 18.7 miles of 20-inch diameter pipeline; (3) the Carter Ranch lateral, which is comprised of the North Rucias lateral, consisting of 7.9 miles of 8-inch diameter pipeline; the Carter Ranch line, consisting of 1.63 miles of 6-inch pipeline and 0.38 miles of 4-inch pipeline; and the North Rucias line, consisting of 0.72 miles of 6-inch diameter pipeline and 2.23 miles of 4-inch diameter pipeline; (4) the Lacy-Tesoro-Inexco lateral, which consists of 1.94 miles of 6-inch diameter pipeline; and (5) meter stations, valves, miscellaneous field and tie-in piping, other appurtenances along the above pipeline segments, and related realty and easement rights. Transco states that the requested abandonment would have no impact on the daily design capacity of, or operating conditions, on Transco's pipeline system.

Transco also states that the proposed abandonment would enable Transco to transfer facilities that are no longer integral to its provision of natural gas transportation service and allow DCP Midstream, a current owner and operator of natural gas gathering facilities in Texas, to integrate the South Texas facilities with its existing system to provide natural gas gathering and processing options not currently available to customers on the facilities while maintaining the ability to deliver natural gas to Transco's pipeline system at the tailgate of the La Gloria processing plant.

Any questions regarding this application should be directed to Ingrid Germany, Staff Analyst, Certificates & Tariffs, P.O. Box 1396, Houston, Texas 77251, at (713) 215–4015.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of

[1] Concurrently, DCP Midstream, LP, filed a Petition for Declaratory Order with the Commission on November 13, 2007, in Docket No. CP08–22–000.

all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: December 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23619 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–5181–000]

Western Area Power Administration; Notice of Filing

November 29, 2007.

Take notice that on November 5, 2007, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested in the Deputy Secretary, by the Department of Energy's Delegation Order No. 00–037.00, submitted for confirmation and approval on a final basis, Rate Schedule L–F7, for firm electric service from the Loveland Area Projects, effective January 1, 2008 and ending December 31, 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23626 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–5031–000]

Western Area Power Administration; Notice of Filing

November 29, 2007.

Take notice that on November 5, 2007, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested in the Deputy Secretary, by the Department of Energy's Delegation Order No. 00–037.00, submitted for confirmation and approval on a final basis, Rate Schedules P–SED–F9, for firm power, and P–SED–F9P for firm peaking power from the Pick Sloan Missouri Basin—Eastern Division, effective January 1, 2008 and ending December 31, 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23631 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8412–003]

Ronald W. and Kathryn C. Denney; Notice of Availability of Environmental Assessment

November 28, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for a surrender of exemption from licensing for the Coiner Mill Project. The project is located on the South River in Augusta County, Virginia.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that the surrender of the project's exemption from licensing would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-library link. Enter the docket number (prefaced by P–) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23623 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4362]

Inman Mills, SC; Notice of Existing Licensee's Failure To File Notice of Intent to File a Subsequent License Application

November 29, 2007.

By August 31, 2007, Inman Mills, the existing licensee for the Riverdale Hydroelectric Project No. 4362,[1] was required to file a notice of intent stating whether it intended to file an application for a subsequent minor license. The existing license for Project No. 4362 expires on August 31, 2012.

The 1,240–kilowatt project is located on the Enoree River, near Enoree, in Spartanburg County, South Carolina. No federal lands are affected.

The principal project works consist of: (1) A 425-foot-long, 12-foot-high gravity reinforced concrete dam topped with 2-foot flashboards; (2) a 110-foot-long, 9-foot-diameter penstock; (3) a powerhouse separate from the dam containing a 1,240 kW capacity generating unit; (4) a reservoir with a surface area of nine acres at normal pool elevation of 512 feet mean sea level and a gross storage capacity of 22 acre-feet; and (5) appurtenant facilities. The average annual generation at the project is 5.4 million kWh.

Pursuant to section 16.19(b) of the Commission's regulations, 18 CFR 16.9(b) (2007), an existing licensee with a minor license must notify the Commission whether or not the licensee intends to file an application for a subsequent new license.

Inman Mills has not filed a notice of intent to file an application for a subsequent license for this project.

Pursuant to section 16.23(b) of the Commission's regulations, an existing licensee that fails to file a notice of intent pursuant to section 16.6(b) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for subsequent license.

Pursuant to section 16.20 of the Commission's regulations, applications for subsequent license (except from the existing licensee which is prohibited from filing) must be filed with the Commission at least 24 months prior to the expiration of the existing license. Applications for license for this project must be filed by August 31, 2010. Questions concerning this notice should be directed to Sergiu Serban at (202) 502–6211 or *sergiu.serban@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23625 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

[1] In April 2006, Commission staff approved a transfer of the license from Inman Mills to Riverdale Development Venture LLC, effective upon the transferee, within 60 days of the transfer order, signing and returning an acceptance sheet and submitting certified copies of the instruments of conveyance (115 FERC ¶62,076). Transferee did not file the required documents, and Inman Mills therefore remains the licensee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL08–1–000; 121 FERC ¶ 61,221]

Policy Statement on Conditioned Licenses for Hydrokinetic Projects

November 30, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Policy Statement.

SUMMARY: The Federal Energy Regulatory Commission is giving notice of a new policy with respect to the issuance of licenses for hydrokinetic projects. In the Policy Statement, the Commission concludes that, in appropriate cases, where the Commission has completed its processing of license applications for hydrokinetic projects, but where other authorizations required under federal law have not yet been received, it will issue conditioned licenses for hydrokinetic projects, predicated on the licensee being precluded from commencing construction until the necessary authorizations are received.

DATES: *Effective Dates:* This Policy Statement is effective November 30, 2007.

FOR FURTHER INFORMATION CONTACT:

Ann Miles, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6769;

John Katz, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8082.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. The Commission is issuing this Policy Statement as part of its ongoing effort to establish a regulatory climate that supports the development of

innovative hydropower projects that use the forces of currents, waves, and tides (generally referred to herein as ''hydrokinetic projects') to generate clean, renewable electric energy. In the Policy Statement, the Commission sets forth a new policy, applicable only to hydrokinetic projects, pursuant to which the Commission will, in appropriate cases, issue licenses pending actions by other entities under federal law. The goal of this action is to shorten the regulatory process and speed the development of meritorious hydrokinetic projects.

I. Background

2. In recent years, the Commission has become aware of efforts by the hydrokinetic industry to test and develop projects that harness the nation's water resources to produce new supplies of much-needed electric power. Estimates suggest that new hydrokinetic technologies, if fully developed, could double the amount of hydropower production in the United States, bringing it from just under 10 percent to close to 20 percent of the national electric energy supply. Given the potential benefits of this new, clean power source, the Commission has taken steps to lower regulatory barriers to its development.

3. On December 6, 2006, the Commission held a technical conference on Hydroelectric Generation from Ocean Waves, Tides, and Currents and from Free-Flowing Rivers.[1] At the conference, the Commission heard from state and federal regulators, developers, and other stakeholders interested in hydrokinetic projects. Following the conference, the Commission received public comments. A number of the comments focused on issues relating to the issuance of preliminary permits for hydrokinetic projects,[2] while other comments discussed the licensing process for such projects.

4. On February 15, 2007, the Commission issued a notice of inquiry and interim statement of policy with respect to preliminary permits for hydrokinetic projects.[3] The Commission explained that there had been a surge in applications for preliminary permits to study potential hydrokinetic projects, and noted the potential for new energy production from those projects. In consequence, the Commission proposed to implement a ''strict scrutiny'' approach to reviewing preliminary permit applications, in order to respond to issues that had been raised at the technical conference, and to encourage thoughtful permit applications and promote competition.[4] The Commission also sought comment on this proposal, and the great majority of the commenters supported the Commission's approach.

5. On October 2, 2007, the Commission held a Commissioner-led technical conference, in Portland, Oregon, to discuss a Commission staff proposal for a pilot licensing process regarding hydrokinetic projects. The staff proposal called for an expedited licensing process, to be completed in as few as six months. Staff suggested that pilot project licenses would be available only for proposed projects that are small (five megawatts or less), are removable or able to be shut down quickly, are not located in sensitive areas, and are for the purpose of testing new technologies or locating appropriate sites.[5] Staff proposed that pilot project licenses (1) have a short term (five years), (2) include a standard condition requiring project alteration or shutdown in the event that there was an unacceptable level of environmental effect, (3) provide the option of applying for a standard 30–50 year license, and (4) require decommissioning and site restoration at license expiration, if a standard license is not sought. The comments filed regarding the pilot project license proposal were largely supportive of a more expedited, less burdensome process, and included a number of specific suggestions as to how the process could be implemented.

II. Discussion

6. Based on the Commission's experience, it has often been the case that Commission staff has completed its processing of a hydropower license application, including preparation of an environmental document, but that authorizations required from other entities under federal laws including the Clean Water Act, the Coastal Zone Management Act, and the Endangered Species Act, have not yet been received. Typically, the Commission has not acted in such instances, sometimes resulting in substantial delays in developers' abilities to undertake non-construction activities. This has a concomitant adverse impact on developers' abilities to move quickly with project construction once the pending authorizations are filed with the Commission.

7. The Commission has taken a different approach with respect to authorizations issued under the Natural Gas Act. In those cases, the Commission has issued pipeline certificates and authorizations to construct liquefied natural gas facilities while action by other entities is still pending, and included in the Commission order provisos that construction may not commence until the necessary authorizations have been received.[6]

8. In light of the nation's interest in the development of its water power resources to meet the growing need for clean, renewable energy, the Commission has decided to adopt the natural gas procedural model with respect to new, hydrokinetic projects. Thus, for new hydrokinetic projects only, we will, in appropriate cases, issue project licenses where the Commission has completed processing an application but other authorizations remain outstanding. In such cases, the license will include conditions precluding the licensee from commencing construction until it has obtained all necessary authorizations.

9. There are a number of policy reasons to consider adopting the gas pipeline practice rather than the conventional hydropower practice with respect to conditioned licensing of hydrokinetic technologies. First, issuing licenses as described will have no environmental impacts. By the terms of the licenses, licensees will not be permitted to commence construction until they have obtained all authorizations required by federal law. When the authorizations are obtained, licensees will be required to file them with the Commission, and the Commission then will review them and incorporate their terms in the licenses, as appropriate.

10. Second, issuing an appropriately conditioned license would in no way diminish the authority of the states or other federal agencies. Construction of a hydrokinetic project could not start without any necessary state and federal authorizations under a conditioned license. For that reason, states and federal agencies will fully retain their authority to take action under relevant federal law.

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[1] Docket AD06–13–000.

[2] Preliminary permits, issued for a term of up to three years pursuant to section 4(f) of the Federal Power Act, 18 U.S.C. 797(f) (2000), allow a potential applicant to develop sufficient information to prepare a license application and give the permit holder a priority with respect to filing a license application, but confer no property rights in the project site and no authority to conduct construction or other land-disturbing activity.

[3] The notice of inquiry and interim statement of policy is published at FERC Stats. & Regs. ¶ 35,555.

[4] *Id.* at ¶ 14, 16.

[5] *See* Notice of Technical Conference and Soliciting Comments, Docket No. AD07–14–000 (issued July 19 2007).

[6] *See, e.g., Crown Landing LLC*, 117 FERC ¶ 61,209 at P 21 and n. 19 and n. 36 (2006); *Georgia Strait Crossing Pipeline LP*, 108 FERC ¶ 61,053 at P 13–16 (2004); *Millennium Pipeline Company, L.P.*, 100 FERC ¶ 61,277 at P 225–231 (2002).

11. Third, the new procedure is suitable for demonstration projects. The Commission can issue licenses quickly, leaving state and federal agencies that have not yet completed their actions the opportunity to do so, ideally quickly, on their own timetable. While it is not clear whether state and federal resource agencies will complete their actions on hydrokinetic projects in a shortened timeframe, as suggested in the pilot project license proposal drafted by Commission staff, issuance of conditioned licenses would likely give the Commission a greater ability to respond quickly to innovative project proposals. Also, early issuance of a Commission license will improve the ability of project developers to secure financing of demonstration projects.

12. Issuance of a conditioned license will be a final Commission action, as is the case with other licenses that contain reservations of authority. Thus, these licenses will be subject to rehearing, and, once accepted, their terms will be binding on licensees. Licensees will be able, and required, to comply with all license terms that do not involve construction, such as those which may require the development of plans and consultation with stakeholders.

III. Comments

13. Interested persons may submit comments on this Policy Statement. Comments are due on or before December 14, 2007. Comments must refer to Docket No. PL08–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

14. Commenters are requested to use appropriate headings and to double space their comments.

15. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

16. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

IV. Document Availability

17. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

18. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits of the docket number), in the docket number field. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at (202) 502–6652 (toll-free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23615 Filed 12–5–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0529; FRL–8502–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; ENERGY STAR® Product Labeling (Renewal); EPA ICR No. 2078.02, OMB Control No. 2060–0528

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 7, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0529, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to a-and-r-*docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rachel Schmeltz, Climate Protection Partnerships Division, Office of Air and Radiation, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9124; fax number: 202–343–2200; e-mail address: *schmeltz.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 13, 2007 (72 FR 38573), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0529 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public

viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: ENERGY STAR® Product Labeling (Renewal).

ICR numbers: EPA ICR No. 2078.02, OMB Control No. 2060–0528.

ICR Status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The centerpiece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements. Since ENERGY STAR is a self-certification program, it is important that program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA must receive qualifying product information from participating manufacturers. Partners are requested to submit updates to qualifying product information on an annual basis, at minimum, so as to ensure that EPA information is recent and accurate. The information will be compiled into a complete qualifying product list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail. In addition, because of the nature of these products, manufacturers of roof products and residential light fixtures are requested to submit testing reports in order to verify qualification.

In order to monitor progress and support the best allocation of resources, EPA also asks manufacturers to submit annual shipment data for the ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, they are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year award.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89.33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents for this information collection request include Partners in ENERGY STAR. Partners are product manufacturers.

Estimated Number of Respondents: 692.

Frequency of Response: Initially/one-time and annually.

Estimated Total Annual Hour Burden: 89,150 hours.

Estimated Total Annual Cost: $7,056,533, includes $238,831 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 18,483 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Although the estimated burden for each individual collection decreased, the overall increase in burden hours reflects the increased number of ENERGY STAR qualified roof products and residential light fixtures for which Partners are required to submit testing reports along with qualifying product information. The currently approved ICR estimated 654 submissions, whereas this ICR estimates 4,464 submissions for this activity. This change is an adjustment to the burden estimates.

Dated: November 29, 2007.

Sara Hisel-McCoy,

Director, Collections Strategies Division.

[FR Doc. E7–23652 Filed 12–5–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0478, FRL–8502–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: Gasoline Volatility (Renewal); EPA ICR No. 1367.08, OMB Control No. 2060–0178

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 7, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0478, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation

Docket and Information Center, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; e-mail address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 23, 2007 (72 FR 40146), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0478, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Regulation of Fuels and Fuel Additives: Gasoline Volatility (Renewal).

ICR numbers: EPA ICR No. 1367.08, OMB Control No. 2060–0178.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to Federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi.

Gasoline that contains at least 9 volume percent ethanol is subject to a standard that is 1.0 psi greater. As an aid to industry compliance and EPA enforcement, the product transfer document which is prepared by the producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol with gasoline which does not contain ethanol. Such mixing would likely result in a gasoline with an ethanol concentration of less than 9 volume percent but with an RVP above the standard. Also, a party wishing a testing exemption for research on gasoline that is not in compliance with the applicable volatility standard must submit certain information to EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 seconds per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parties which produce or import gasoline containing ethanol, and parties seeking a testing exemption.

Estimated Number of Respondents: 2,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 13,997.

Estimated Total Annual Cost: $916,845, includes $20 in annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 7,550 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects EPA's updating of burden estimates. The increase is due to an increase in the use of ethanol in gasoline due to (1) the discontinued use of methyl tertiary butyl ether in gasoline and (2) the renewable fuels requirements which recently took effect.

Dated: November 29, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–23665 Filed 12–5–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8503–2]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection

and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will hold public meetings by conference call on the 2nd Wednesday of each month, beginning with December 12, 2007. The purpose of these meetings is to provide the Council with the opportunity to advise the Environmental Education Division on its implementation of the National Environmental Protection Act of 1990.

DATES: This notice is applicable for the following dates:

- December 12, 2007.
- January 9, 2008.
- February 13, 2008.
- March 12, 2008.
- April 9, 2008.
- May 14, 2008.

Conference Call Instructions: Each participant will need to call into the Reservationless-Plus System for the conference call.

- Call the dial-in number no earlier than 3 p.m. EST. The number is (866) 299–3188.
- Enter the conference code when prompted. The conference code is: 2025640453.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed.*

Dated: November 28, 2007.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E7–23653 Filed 12–5–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Extension of Comment Period for Exposure Drafts Accounting for Federal Oil and Gas Resources and Reporting Gains and Losses From Changes in Assumption and Selecting Discount Rates and Valuation Dates

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has extended the Comment period for the Exposure Draft *Accounting for Federal Oil and Gas Resources* until January 11, 2008. The FASAB is also extending the comment period for the Exposure Draft *Reporting Gains and Losses from Changes in Assumption and Selecting Discount Rates and Valuation Dates* until January 15, 2008.

The Exposure Drafts are available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contracting FASAB at (202) 512–7350. Respondents are encourages to comment on any part of the exposure drafts. Written comments are requested by January 11, 2008, and January 15, 2008, respectively. Comments should be sent to *fasab@fasab.gov* or: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, 441 G Street, NW., Washington, DC 20648, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: November 30, 2007.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 07–5942 Filed 12–5–07; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 27, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before February 4, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or TV Booster Station.

Form Number: FCC Form 346.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 3,500.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 24,500 hours.

Total Annual Costs: $10,493,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees/permittees/applicants use FCC Form 346 to apply for authority to construct or make changes in a Low Power Television, TV Translator, or TV Booster broadcast station. On September 9, 2004, the Commission adopted a Report and Order, FCC 04–220, MB Docket Number 03–185, In the Matter of Parts 73 and 74 of the Commission's Rules to Established Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations. To implement the

new rules, the Commission revised FCC Form 346 to allow licensees/permittees/applicants to use the revised FCC Form 346 to file for digital stations or for conversion of existing analog to digital.

Applicants are also subject to the third party disclosure requirements under 47 CFR 73.3580. Within 30 days of tendering the application, the applicant is required to publish a notice in a newspaper of general circulation when filing all applications for new or major changes in facilities. The notice is to appear at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be maintained with the application. FCC staff use the data to determine if the applicant is qualified, meets basic statutory and treaty requirements, and will not cause interference to other authorized broadcast services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–23582 Filed 12–5–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, December 6, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The Following Item Has Been Added To The Agenda: Advisory Opinion 2007–29: Representative Jesse L. Jackson, Jr.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–5977 Filed 12–4–07; 2:28 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mills Financial Services, Inc., Brainerd, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank – Sanborn, Sanborn, Minnesota.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Heartland Bancshares, Inc., Clinton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Marshall Community Bancshares, Inc., and thereby indirectly acquire Community Bank of Marshall, both in Marshall, Missouri.

Board of Governors of the Federal Reserve System, December 3, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–23647 Filed 12–5–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E-23179) published on pages 67725-67726 of the issue for Friday, November 30, 2007.

Under the Federal Reserve Bank of San Francisco heading, the entry for Franklin Resources, Inc., San Mateo, California, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Franklin Resources, Inc., San Mateo, California; to retain 5.15 percent of the voting shares of Commerce Bancorp, Inc., Cherry Hill, New Jersey, and thereby indirectly retain voting shares of Commerce Bank, N.A., Philadelphia, Pennsylvania.

Comments on this application must be received by December 26, 2007.

Board of Governors of the Federal Reserve System, December 3, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–23649 Filed 12–5–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at Massachusetts Institute of Technology, Cambridge, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Massachusetts Institute of Technology, Cambridge, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Massachusetts Institute of Technology.

Location: Cambridge, Massachusetts.

Job Titles and/or Job Duties: All Atomic Weapons Employer employees.

Period of Employment: August 13, 1942 through December 31, 1945; and

Job Titles and/or Job Duties: All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors, who worked in the Hood Building.

Period of Employment: January 13, 1946 through December 31, 1963.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: November 30, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–23748 Filed 12–5–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at SAM Laboratories, Columbia University, New York, New York, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at SAM Laboratories, Columbia University, New York, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: SAM Laboratories, Columbia University.

Location: New York, New York.

Job Titles and/or Job Duties: All workers.

Period of Employment: January 1, 1942 through December 31, 1947.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: November 30, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–23704 Filed 12–5–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Voluntary Questionnaire and Data Collection Testing to Pretest Home Health Care CAHPS Questions and Methodology.'' This activity is being conducted under AHRQ's generic pre-testing clearance OMB #0935–0125. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. § 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 7, 2008.

ADDRESSES: Comments on this notice should be submitted electronically to both AHRQ and to OMB. Comments should be submitted to Doris Lefkowitz, Reports Clearance Officer, AHRQ at *doris.lefkowitz@ahrq.hhs.gov* and to AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ'S desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer). Copies of the proposed collection plans, data collection instruments and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

The Consumer Assessment of Health Plans Survey (CAHPS) program was initiated in 1995 to develop a survey and report on consumers' perspectives on the quality of their health plans. Since that time the CAHPS program, in partnership with CMS and others, has expanded its scope and developed surveys and reports regarding patient assessments of care received from individual clinicians, group practices, in-center hemodialysis services, nursing homes and hospitals. Now, CMS has asked the CAHPS team to develop a survey to obtain the consumer's perspective on home health care and services.

One of the top priorities of the Centers for Medicare & Medicaid Services is to increase the transparency in healthcare by providing quality and cost information to the public. A critical component missing from the current measurement set for home health agencies is information from the consumer perspective on the quality of care provided. The information collection proposed here will be a field test of a preliminary instrument designed to obtain consumer assessments of home health agency care.

Methods of Collection

This field test will use a two stage sampling approach. The first stage is a convenience sample of Medicaid and/or Medicare certified Home Health Agencies (HHA) and the second stage is a probability sample of each selected HHA's eligible patients. Thirty-six HHA's across multiple states and home health agency operators will be recruited to participate. The sample of HHAs will vary by size, financial ownership and organizational type (chain or independent). AHRQ anticipates sampling an average of 138 patients per agency.

Each selected patient will be mailed the questionnaire and cover letter. To maximize response rates, follow up activities will include an additional request for participation by mail and by phone call. Individuals contacted will be assured of the confidentiality of their replies under Section 934(c) of the Public Health Service Act.

Estimated Annual Respondent Burden

The survey will be distributed to 4,968 patients with a projected completion rate of 40 percent for a total of 1,987 returned surveys. Responses are estimated at 20 minutes per survey.

Therefore the estimate of total burden of the survey is 663 hours.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail survey with mail and telephone follow up	1,987	1	20/60	663
Total	1,987	1	20/60	663

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Mail survey with mail and telephone follow up	1,987	663	$20.00	$13,260
Total	1,987	663	20.00	13,260

*Based upon the average wages, ''National Compensation Survey: Occupational Wages in the United States, June 2006,'' U.S. Department of Labor, Bureau of Labor Statistics. (*http://www.bls.gov/ncs/home.htm.* Last viewed August 27, 2007.)

Estimated Annual Costs to the Federal Government

The total cost to the Government for developing this survey is approximately $880,000. The contracted costs include approximately $600,000 for survey development, $110,000 for data collection and $90,000 for analysis of field test results. Total costs also include $80,000 in AHRQ staff costs.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's Information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including the hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 29, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5949 Filed 12–5–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the renewal of the generic information collection project: ''Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 15, 2007 and allowed 60 days for public comment. No comments were received. A 30-day **Federal Register** notice was published on October 19, 2007 to allow an additional 30 days for public comment. No comments were received. However, changes to the estimated annual respondent burden hours and the methodologies that will be used for the data collection require an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 7, 2008.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427-1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality.''

AHRQ plans to employ the latest techniques to improve its current data collections by developing new surveys, or information collection tools and methods, and by revising existing collections in anticipation of, or in response to, changes in the healthcare field, for a three-year period. The clearance request is limited to research on information collection tools and methods, and related reports and does not extend to the collection of data for public release.

A generic clearance for this work allows AHRQ to draft and test

information collection tools and methods more quickly, thereby managing project time more efficiently and improving the quality of the methodological data the agency collects.

In some instances the ability to pre-test/pilot-test information collection surveys, tool and methods, in anticipation of work, or early in a project, may result in the decision not to proceed with particular survey activities. This would save both public and private resources and effectively eliminate or reduce respondent burden.

Many of the tools AHRQ develops are made available to users in the private sector. The health care environment changes rapidly and requires a quick response from the agency to provide appropriately refined tools. A generic clearance for this methodological work will facilitate the agency's timely development of information collection tools and methods suitable for use in changing conditions.

It is particularly important to refine AHRQ's tools because they have a widespread impact. This tools are frequently made available to help the private sector to improve health care quality by enabling the gathering of useful data for analysis. They are also used to provide information about health care quality to consumers and purchasers so that they can make marketplace choices to influence and improve health care quality. The current clearance will expire January 31, 2008. This is a request for a generic approval from OMB to test information collection instruments and methods over the next three years.

Methods of Collection

Participation in the testing of information collection tools and methods will be fully voluntary and non-participation will have no affect on eligibility for, or receipt of, future AHRQ health services research support or on future opportunities to participate in research or to obtain information research results. Specific estimation procedures, when used, will be described when we notify OMB as to actual studies conducted under the clearance.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail/e-mail*	8,000	1	20/60	2,667
Telephone	200	1	40/60	134
Web-based	2,000	1	10/60	334
Focus Groups	100	1	2.0	200
In-person	200	1	1.0	200
Automated**	500	1	1.0	500
Cognitive Lab Experiments	200	1	1.5	
Totals	11,200	na	na	4,335

* May include telephone non-response follow-up in which case the burden will not change.
** May include testing of database software, CAPI software or other automated technologies.

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Type of information collection	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Mail/e-mail*	8,000	2,667	$30.00	$80,010
Telephone	200	134	30.00	4,020
Web-based	2,000	334	30.00	10,020
Focus Groups	100	200	30.00	6,000
In-person	200	200	30.00	6,000
Automated**	500	500	30.00	15,000
Cognitive Lab Experiments	200	300	30.00	9,000
Totals	11,200	4,335	30.00	130,050

* May include telephone non-response follow-up in which case the burden will not change.
** May include testing of database software, CAPI software or other automated technologies.

This information collection will not impose a cost burden on the respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

Information collections conducted under this generic clearance will in some cases be carried out under contract. Assuming four data collections per year (either mail/e-mail, telephone, web-based or in-person) at an average cost of $150,000 each, and two focus groups, automated data collections or lab experiments at an average cost of $20,000 each, total contract costs could be $640,000 per year.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 29, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5950 Filed 12–05–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0307]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Gonococcal Isolate Surveillance Project (GISP)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year revision with change for this project. The objectives of GISP are to monitor trends in antimicrobial susceptibility of strains of *Neisseria gonorrhoeae* in the U.S. and characterize resistant isolates. GISP provides critical surveillance for antimicrobial resistance, allowing for informed treatment recommendations.

This project began in 1986 as a voluntary surveillance project and has involved 5 regional laboratories and 30 publicly-funded, sexually transmitted disease (STD) clinics around the country. The STD clinics submit up to 25 gonococcal isolates per month to the regional laboratories, which measure susceptibility to a panel of antibiotics. Limited demographic and clinical information corresponding to the isolates are submitted directly by the STD clinics to CDC.

During 1986–2006, GISP has demonstrated the ability to effectively achieve its objectives. The emergence of resistance in the United States to penicillin, tetracyclines, and now fluoroquinolones was identified through GISP and makes ongoing surveillance critical. Increased prevalence of fluoroquinolone-resistant *N. gonorrhoeae* (QRNG) as seen in GISP data has prompted the CDC to update the treatment recommendations for gonorrhea in the CDC's Sexually Transmitted Diseases Treatment Guidelines, 2006 and to release an MMWR article stating the CDC no longer recommends fluoroquinolones for treatment of gonococcal infections (CDC, MMWR, Vol.56, No.14, 332–336). Respondents are paid by Federal funds through the CDC Comprehensive STD Prevention Systems, Prevention of STD-Related Infertility, and Syphilis Elimination Grant (CSPS), for their participation in GISP network. The estimated annualized burden for this data collection is 8,628 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)
Clinic	Form 1	30	240	11/60
Laboratory	Form 2	5	1,452	1
	Form 3	5	48	12/60
Total		40		

Dated: November 28, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer.

[FR Doc. E7–23633 Filed 12–5–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–0263]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to continue its data collection, ''Requirements for a Special Permit to

Import Cynomolgus, African Green, or Rhesus Monkeys into the United States'', for another three years. This data collection is currently approved under OMB Control No. 0920–0263. There are no revisions proposed to the currently approved information collection request.

A registered importer must request a special permit to import Cynomolgus, African Green, or Rhesus monkeys. To receive a special permit to import nonhuman primates, the importer must submit a written plan to the Director of CDC which specifies steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and to determine whether the measures being taken are adequate to prevent exposure of persons and animals during importation. CDC will monitor at least 2 shipments to be assured that the provisions of a special permit plan are being followed by a new permit holder. CDC will assure that adequate disease control practices are being used by new permit holders before the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This extension eliminates the burden on importers to repeatedly report identical information, requiring submission only of specific shipment itineraries and information on changes to the plan which require approval.

Respondents are commercial or not-for-profit importers of nonhuman primates. The burden represents full disclosure of information and itinerary/change information, respectively. There are no costs to respondents except for their time to complete the requisition process. The annualized burden for this data collection is 13 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden
Businesses (limited permit)	5	2	30/60	5
Businesses (extended permit)	1	3	10/60	5
Organizations (limited permit)	3	2	30/60	3
Organizations (extended permit)	12	2	10/60	4
Total				13

Dated: November 29, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–23634 Filed 12–5–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of New York State Children's Health Insurance Program (SCHIP) State Child Health Plan Amendment (SPA) #10

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on January 16, 2008, at the CMS New York Regional Office, 38–110A, 26 Federal Plaza, New York, New York 10278, to reconsider CMS' decision to disapprove New York SCHIP SPA #10.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove New York SCHIP SPA #10 which was submitted on April 12, 2007, with additional information submitted on May 9, 2007, and August 27, 2007, and disapproved on September 7, 2007.

This SPA would have increased the financial eligibility standard for the State's separate SCHIP from the current effective family income eligibility level at or below 250 percent of the Federal poverty level (FPL) to an effective family income eligibility level at or below 400 percent of the FPL. The SPA also would have imposed a 6-month waiting period from the date of last insurance coverage for children with family incomes above 250 percent of the FPL, with certain listed exceptions.

The CMS disapproved the SPA because it would result in a child health plan that did not comport with the requirements of sections 2101(a), 2102(a), and 2102(b)(3)(C) of the Social Security Act (the Act). These requirements provide that funding must be used to provide coverage to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage, that the State plan includes effective outreach procedures to enroll all eligible uninsured children, and that the coverage made available does not merely substitute for private coverage. This disapproval is also consistent with the August 17, 2007, letter to State Health Officials clarifying how CMS believes these existing statutory requirements should be applied by all States expanding SCHIP effective eligibility levels above 250 percent of the FPL.

The following will be at issue at the hearing:

- Whether the State has demonstrated that SPA #10 is consistent with the requirement in section 2101(a) of the Act for effective and efficient program operation. SPA #10 would require that the State devote limited SCHIP funding to children with higher effective family incomes when the program has not enrolled substantially all of the core

population of targeted low-income children with family incomes below 200 percent of the FPL;

• Whether New York has demonstrated that SPA #10 is consistent with the requirements in section 2102(a) to identify and enroll all uncovered children who are eligible to participate in public health insurance programs, to ensure that the SCHIP program is coordinated with those efforts, and to have effective outreach procedures;

• Whether the State has met the requirements to have reasonable procedures in place to ensure that health benefits coverage provided under the State plan does not substitute for coverage provided under group health plans, consistent with section 2102(b)(3)(C) of the Act, as implemented by 42 CFR 457.805. For family income eligibility levels higher than 250 percent of the FPL, the preamble to that regulatory provision indicated that States would need to have specific procedures in place, and later the August 17, 2007, State Health Officials' Letter further articulated the procedures that CMS would consider reasonable. SPA #10 did not include those specific procedures (including a period of uninsurance of at least 1 year, and cost sharing comparable to competing private plans subject to the overall 5 percent family cap).

Section 1116 of the Act and Federal regulations at 42 CFR 457.204 and 42 CFR part 430, subpart D, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Deborah Bachrach, Deputy Commissioner, Office of Health Insurance Programs, State of New York, Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237.

Dear Ms. Bachrach:

I am responding to your request for reconsideration of the decision to disapprove the New York State Children's Health Insurance Program (SCHIP) State Child Health Plan Amendment (SPA) #10, which was submitted on April 12, 2007, with additional information submitted on May 9, 2007, and August 27, 2007, and disapproved on September 7, 2007.

This SPA would have increased the financial eligibility standard for the State's separate SCHIP from the current effective family income eligibility level at or below 250 percent of the Federal poverty level (FPL) to an effective family income eligibility level at or below 400 percent of the FPL. The SPA also would have imposed a 6-month waiting period from the date of last insurance coverage for children with family incomes above 250 percent of the FPL, with certain listed exceptions.

The Centers for Medicare & Medicaid Services (CMS) disapproved the SPA because it would result in a child health plan that did not comport with the requirements of sections 2101(a), 2102(a), and 2102(b)(3)(C) of the Social Security Act (the Act). These requirements provide that funding must be used to provide coverage to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage, that the State plan includes effective outreach procedures to enroll all eligible uninsured children, and that the coverage made available does not merely substitute for private coverage. This disapproval is also consistent with the August 17, 2007, letter to State Health Officials clarifying how CMS believes these existing statutory requirements should be applied by all States expanding SCHIP effective eligibility levels above 250 percent of the FPL.

The following will be at issue at the hearing:

• Whether the State has demonstrated that SPA #10 is consistent with the requirement in section 2101(a) of the Act for effective and efficient program operation. SPA #10 would require that the State devote limited SCHIP funding to children with higher effective family incomes when the program has not enrolled substantially all of the core population of targeted low-income children with family incomes below 200 percent of the FPL;

• Whether New York has demonstrated that SPA #10 is consistent with the requirements in section 2102(a) to identify and enroll all uncovered children who are eligible to participate in public health insurance programs, to ensure that the SCHIP program is coordinated with those efforts, and to have effective outreach procedures;

• Whether the State has met the requirements to have reasonable procedures in place to ensure that health benefits coverage provided under the State plan do not substitute for coverage provided under group health plans, consistent with section 2102(b)(3)(C) of the Act, as implemented by Federal regulations at 42 CFR 457.805. For family income eligibility levels higher than 250 percent of the FPL, the preamble to that regulatory provision indicated that States would need to have specific procedures in place, and later the August 17, 2007, State Health Officials' Letter further articulated the procedures that CMS would consider reasonable. SPA #10 did not include those specific procedures (including a period of uninsurance of at least 1 year, and cost sharing comparable to competing private plans subject to the overall 5 percent family cap).

I am scheduling a hearing on your request for reconsideration to be held on January 16, 2008, at the CMS New York Regional Office, 38–110A, 26 Federal Plaza, New York, New York 10278, to reconsider the decision to disapprove SCHIP SPA #10. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430, Subpart D.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Kerry Weems,
Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 457.203)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program)

Dated: November 30, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–23734 Filed 12–5–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of cancellation of standing program announcement for the Assets for Independence (AFI) Program (HHS–2005–ACF–OCS–EI–0053).

CFDA#: 93.602.

Legislative Authority: The Assets for Independence Act (Title IV of the

Community Opportunities, Accountability, and Training and Educational Act of 1998, as amended, Pub. L. 105–285, 42 U.S.C. 604 note).

SUMMARY: This notice cancels the standing program announcement for the Assets for Independence (AFI) Program (HHS–2005–ACF–OCS–EI–0053) that was published in the **Federal Register** on February 2, 2005.

A new standing program announcement for the AFI program will be published at the Administration for Children and Families' Grant Opportunities Web page at *http://www.acf.hhs.gov/grants/index.html.* The new standing program announcement and application package will also be available at *www.grants.gov*. Interested parties should register with *www.grants.gov* to receive e-mail alerts announcing publication, application due dates, and application requirements.

FOR FURTHER INFORMATION CONTACT: James Gatz, Program Manager, Assets for Independence Program, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone: (202) 401–5284. E-mail: *AFIProgram@acf.hhs.gov.*

Dated: December 3, 2007.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. E7–23731 Filed 12–5–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0004, FEMA Form 81–64.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Application for Participation in the National Flood Insurance Program.

OMB Number: 1660–0004.

Abstract: The National Flood Insurance Program (NFIP) provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents of the communities. Participation in the NFIP is mandatory in order for flood related presidentially-declared communities to receive Federal disaster assistance.

Affected Public: Federal, State, local, or Tribal Governments.

Number of Respondents: 187.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 748 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 29, 2007.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–23661 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0013.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Exemption of State-Owned Properties Under Self-Insurance.

OMB Number: 1660–0013.

Abstract: Application for exemption is made to the Federal Insurance Administration by the Governor or other duly authorized documentation, which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceed the standards set forth in 44 CFR 75.11.

Affected Public: State, local or Tribal Governments.

Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100 hours.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop

Room 308, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 29, 2007.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–23662 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB No.1600–0062.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000.

OMB Number: 1660–0062.

Abstract: The purpose of State Hazard Mitigation Plan requirements is to support State administration of FEMA mitigation grant programs, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management. Implementation of plans, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals, priorities to reduce risks from natural hazards.

Affected Public: State, local or Tribal Governments and Individuals or households.

Number of Respondents: 56.

Estimated Time per Respondent: 2,408 hours.

Estimated Total Annual Burden Hours: 768,320 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments must be submitted on or before January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 308, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 29, 2007.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–23663 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0072.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Mitigation Grant Program/ e-Grants (previously named Flood Mitigation Assistance (e-Grants)).

OMB Number: 1660–0072.

Abstract: The States will utilize the Mitigation Grant Program /e-Grants, automated application to report to FEMA on a quarterly basis, certify how funding is being used and to report on the progress of mitigation activities funded under grant awards, made to grantees by FEMA. FEMA will use this system to review the Grantees quarterly reports to ensure that mitigation grant activities are progressing on schedule and to track the expenditure of funds.

Affected Public: State, local or Tribal Governments, and Federal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 24.5 hours.

Estimated Total Annual Burden Hours: 43,848 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 308, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 29, 2007.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–23664 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1731–DR]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1731–DR), dated October 24, 2007, and related determinations.

DATES: *Effective Dates:* November 8, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 24, 2007.

Orange, San Bernardino, and San Diego Counties for Public Assistance Categories C–G (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–23694 Filed 12–5–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Banks Lake National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment for Banks Lake National Wildlife Refuge in Lanier County, Georgia.

SUMMARY: The Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment for Banks Lake National Wildlife Refuge. This notice is furnished in compliance with the Service's comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, comments must be received by January 7, 2008.

ADDRESSES: Comments, questions, and requests for more information regarding Banks Lake National Wildlife Refuge should be sent to: Ms. Laura Housh, Regional Planner, Okefenokee National Wildlife Refuge, Route 2, Box 3330, Folkston, Georgia 31537; Phone: 912/496–7366, Ext. 244; Fax: 912/496–3332; E-mail: *laura_housh@fws.gov*. You may find additional information concerning the refuge at the refuge's Internet site: *http://www.fws.gov/southeast/BanksLake*.

FOR FURTHER INFORMATION CONTACT: Mr. George Constantino, Refuge Manager, Okefenokee National Wildlife Refuge; Telephone: 912/496–7366.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Public input in this planning process is essential.

Each unit of the National Wildlife Refuge System is established with specific purposes. These purposes are used to develop and prioritize management goals and objectives with the National Wildlife Refuge System mission, and to guide which public uses will occur on the refuge. The planning process is a means for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

A comprehensive conservation planning process will be conducted that will provide opportunities for Tribal, State, Federal, and local governments; non-governmental organizations; and the public to participate in issue scoping and comment. The Service invites anyone interested to respond to the following questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for Banks Lake National Wildlife Refuge?

The above questions have been provided for your optional use. You are not required to provide any information. The Planning Team developed these questions to gather information about individual issues and ideas concerning the refuge. The Planning Team will use comments it receives as part of the planning process; however, it will not reference individual comments or directly respond to them.

Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process. An open house style meeting will be held to solicit comments during the scoping phase of the planning process.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); NEPA regulations (40 CFR parts 1500–1508); and other appropriate Federal laws and regulations. All comments received become part of the official public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Congress established Banks Lake National Wildlife Refuge in 1985, for the protection and conservation of its unique environment, as well as for migratory and resident wildlife. The refuge comprises 3,559 acres of open water, marsh, hardwood swamp, and uplands. The refuge coordinates with

State, Federal, and local agencies; The Nature Conservancy; Moody Air Force Base; and adjacent landowners to fulfill the mission of the National Wildlife Refuge System and promote sound ecological landscape management. Public use opportunities on the refuge include fishing, boating (e.g., small engine, canoe, and kayak), wildlife observation and photography, and hiking.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 31, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–23643 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Enhancement of Survival Permit Associated With the Reintroduction of Black-Footed Ferrets on the Northern Cheyenne Tribal Lands in Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the receipt of an application for the reintroduction of black-footed ferrets on Northern Cheyenne Tribal lands in Montana pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The Service requests information, views, and opinions from the public via this notice.

DATES: Written comments on this request for a permit must be received by January 7, 2008.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Regional Permit Coordinator (**ADDRESSES** above), telephone 303–236–4256, or Pete Gober, Project Leader, South Dakota Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, telephone 605–224–8693, extension 24.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of an enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Act.

Applicant—Northern Cheyenne Natural Resource Department, Lame Deer, Montana, TE–167158.

The applicant requests a permit to take black-footed ferret in conjunction with reintroduction and recovery activities throughout the Northern Cheyenne Reservation portion of the species' range for the purpose of enhancing its survival and recovery. The black-footed ferret is one of the rarest mammals in North America. Formerly co-occurring across the ranges of all prairie dog species, its distribution has been greatly reduced due to disease (plague), poisoning of prairie dogs, and human-related habitat alteration. The only known current populations are those in captivity and those started through reintroduction of captive-bred individuals. Protection of this species and enhancement of its habitat on Tribal land will benefit recovery efforts.

The primary objectives of the proposed action are to—(a) restore the native prairie ecosystem on the Northern Cheyenne, consistent with Northern Cheyenne and Native American traditions and values; (b) establish a viable, self-sustaining ferret population in South-central Montana consistent with the Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana and the Black-footed Ferret Recovery Plan (U.S. Fish and Wildlife Service 1988); and (c) further test the effectiveness of methods to address the threat of Sylvatic plague (*Yersinia pestis*) on black-footed ferret survival in the wild by using vaccination and flea control methods. We have made the preliminary determination that the proposed activities will enhance survival and recovery of the black-footed ferret. This notice is provided pursuant to section 10 of the Act.

We will evaluate the permit application and the comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the reintroduction of the black-footed ferret. The final permit decision will be made no sooner than 30 days after the date of this notice.

Authority: The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Dated: November 1, 2007.

Emily Jo Williams,

Acting Regional Director, Denver, Colorado.

[FR Doc. E7–23642 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6350–DQ–047H]

Notice of Extension of Comment Period for the Draft Environmental Impact Statement for the Revision of Resource Management Plans of the Western Oregon Bureau of Land Management Districts

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension.

SUMMARY: The Bureau of Land Management (BLM) announces an extension of the comment period on the Draft Environmental Impact Statement for the Revision of Resource Management Plans of the Western Oregon Bureau of Land Management Districts. The original notice published in the **Federal Register** on August 10, 2007 [72 FR 45062] and provided for a comment period to end on November 9, 2007. The BLM is extending the comment period to January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Western Oregon Plan Revisions Public Outreach Coordinator, at (503) 808–6629.

SUPPLEMENTARY INFORMATION: The original Notice of Availability provided for comments on the Draft IAP/EIS to be received through November 9, 2007. The BLM received requests for an extension of the comment period from individuals and groups. The BLM has decided to accede to these requests. Comments on the Draft Resource Management Plan and Environmental Impact Statement will now be accepted through January 11, 2008.

Dated: November 20, 2007.

Edward W. Shepard,

State Director, OR/WA, USDI Bureau of Land Management.

[FR Doc. E7–23743 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 680–07–5101–ER B241] [CACA 48254]

Granite Mountain LLC Wind Farm, California Desert District, Notice of Intent To Prepare an Environmental Impact Statement/Notice of Preparation of an Environmental Impact Report and To Amend the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended (NEPA), *42 U.S.C. 4321–4347,* the Bureau of Land Management (BLM), Barstow Field Office, Barstow, California, in coordination with the County of San Bernardino (County), California will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the development and operation of a wind energy farm on public and private lands in the Granite Mountains, north of Apple Valley, California to meet the requirements of both the California Environmental Quality Act (CEQA), and NEPA. The project and associated ancillary facilities will require both BLM and County authorizations. Pursuant to the California Desert Conservation Area (CDCA) Plan, new power generation projects must be evaluated through the planning process. By this notice the BLM is announcing a 30-day period for public scoping of alternatives, issues, the scope of the direct, indirect, and cumulative analysis for this proposal and associated planning criteria. In addition, BLM is requesting the views of other agencies as to the scope and content of the environmental information that is germane to the statutory responsibilities or areas of expertise for your agencies in connection with the proposed project and the analysis of its impacts.

DATES: This notice initiates the public scoping process. Requests for participation in the development of this EIS/EIR as a cooperating or participating agency, and comments on issues or alternatives related to this proposal must be received within 30 days of the date of publication of this notice in the **Federal Register**, and may be submitted in writing to the address listed below. Additionally, at least two scoping meetings will be held to encourage public input. The public meetings will be announced through the local news media, newspapers, and the BLM Web site (*http://www.ca.blm.gov/barstow*) at least 15 days prior to the event. Additional opportunities for public participation will be provided upon publication of the draft EIS/EIR.

ADDRESSES: Requests for participation in the EIS development by agencies, requests to be added to the mailing list, and comments on the scope and content of the EIS should be sent to Edy Seehafer, Environmental Coordinator, Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311, or by fax at 760–252–6099, or e-mail at *eseehafe@blm.gov.* A follow-up hard copy is requested when comments are sent by fax or e-mail, to assure readability. Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review Monday through Friday, except holidays, at the BLM Barstow Field Office located at 2601 Barstow Road, Barstow, California, during regular business hours of 7:45 a.m. to 4:30 p.m. and at the County of San Bernardino, either at 385 N. Arrowhead Avenue, San Bernardino or at 15456 West Sage Street, Victorville, CA 92392, during regular business hours of 8 a.m. to 5 p.m., and may be published as part of the EIS/EIR. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Joan Patrovsky, 760–252–6032, or *jpatrovs@blm.gov.*

EIS/EIR Process: Edy Seehafer, 760–252–6032, or *eseehafe@blm.gov.*

SUPPLEMENTARY INFORMATION: Granite Wind, LLC has applied for a right of way on public lands and a conditional use permit on private lands to construct a wind energy generating facility at Granite Mountain, near Apple Valley, in San Bernardino County. The project site is east of Apple Valley and west of Lucerne Valley. Operations are expected to last approximately 30 years. The proposed project would install approximately 27 wind turbines on public and private lands, with a generating capacity of approximately 62.1 to 81 megawatts, depending on the make and model of wind turbines used for the proposed project. Related structures would include access roads, underground 34.5 kV transmission lines and fiber-optic cables, an electrical substation and a 230 kV power-line from the project site to Southern California Edison's existing 230 kV transmission system and an electrical substation interconnecting the project to the existing 230 kV transmission system. If approved, the wind energy generating facility on public lands would be authorized in accordance with Title V of the Federal Land Policy and Management Act of 1976 and the federal regulations at 43 CFR 2800. The proposed project would take approximately 7 months to construct.

Issues that are anticipated to be addressed in this EIS/EIR and plan amendment include visual impacts, avian impacts, socioeconomic impacts, electrical transmission capacity, and cumulative impacts. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of wind generation facilities on public lands, requires that all power generating facilities be considered through the planning process. Planning criteria for consideration of a CDCA plan amendment to provide for power generation at this site include:

a. The plan amendment will be completed in compliance with FLPMA, NEPA and all other applicable Federal and State laws, Executive orders, and management policies of the BLM;

b. The plan amendment will recognize and conform to previous site-specific planning decisions from BLM regional and bioregional plans;

c. Where existing planning decisions are still valid, those decisions will remain unchanged;

d. Where appropriate, this EIS will reference the BLM Programmatic Wind EIS (2005);

e. For the purposes of cumulative analysis, past, present, and reasonably foreseeable projects will be those alternative energy projects which have

been approved, or for which a draft or final plan of development has been received, or is anticipated prior to the release of the Draft or Final EIS, within the CDCA;

f. The plan amendment will recognize valid existing rights; and

g. Interagency and Native American Tribal consultations will be conducted in accordance with policy, and will be given due consideration. The planning process will include the consideration of impacts on Indian trust assets, other jurisdictions, and agencies.

Copies of the environmental assessment and initial study are not attached. Pursuant to NEPA Departmental Guidelines, in 516 DM 11.4 and CEQA Guidelines, Section 15063(a), the Bureau of Land Management and the County of San Bernardino have opted to forgo preparation of an initial study and proceed directly to a draft EIS/EIR.

Dated: November 21, 2007.

Roxie C. Trost,

Field Manager, Barstow Field Office.

[FR Doc. E7–23728 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–210–1430–ES; NMNM 115587]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of R&PP lease and or patent of public land in San Juan County; New Mexico.

SUMMARY: The following described public land is determined suitable for classification for leasing and subsequent conveyance to San Juan County for a Drag Strip, under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 *et seq.*, and under Sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315(f), and Executive Order No. 6910.

New Mexico Principal Meridian

T. 26 N., R. 11 W.,
Sec. 1: S½SW¼NE¼, SW¼SE¼NE¼, S½S½NW¼, N½N½SW¼, N½N½SE¼.

The area described contains 140 acres more or less.

COMMENT DATES: Submit comments on or before January 22, 2008. Interested parties may submit comments regarding the proposed leasing/conveyance or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Bureau of land Management, Farming District Manager, 1235 La Plata Highway, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Marcy Romero, Realty Specialist, at the Bureau of Land Management, Farmington Field Office, at (505) 599–6339. Information related to this action, including the environmental assessment, is available for review at 1235 La Plata Highway, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The lease, when issued, will be subject to the following terms:

1. The Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. The Resource Conservation and Recovery Act of 19976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Provisions of Title VI of the Civil Rights Act of 1964.

4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent document, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the lands under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. All valid existing rights e.g. rights-of-way and leases of record.

Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, sex, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The proposal serves the public interest since it would provide the recreation facilities and related buildings that would meet the needs of the drag strip.

Upon publication of this notice in the **Federal Register**, the above described public lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for patent under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for conveyance. Comments on the classifications are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Conveyance Comments: Interested parties may submit comments regarding the patent and the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the Farmington Field Manager, who may sustain, vacate, or

modify this reality action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on February 4, 2008. The land will not be offered for patent until after the classification becomes effective.

(Authority: 43 CFR 2741.5).

Dated: November 29, 2007.

Joel Farrell,

Assistant Field Manager for Resources.

[FR Doc. 07–5966 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–VB–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting Cancellation; Federal Register: November 9, 2007 (Volume 72, Number 217) [Notices] Page 63628–63629] [DOCID:fr09no07–94] [FR Doc. 07–5597 Filed 11–8–07; 8:45 am]

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: The Joint meeting of the California Bay-Delta Public Advisory Committee and the California Bay-Delta Authority meeting noticed in the **Federal Register** on November 8, 2007, Volume 72, Number 217, Page 63628–63629, has been cancelled. The subject meeting will be rescheduled at a later date which is yet to be determined.

DATES: The meeting was scheduled for Thursday, December 13, 2007, from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Diane Buzzard, U.S. Bureau of Reclamation, at 916–978–5022 or Julie Alvis, California Bay-Delta Program, at 916–445–5551.

Dated: November 26, 2007.

Diane A. Buzzard,

Acting Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 07–5948 Filed 12–5–07; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request: Generic Survey Clearance for Import Injury Investigations

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The proposed information collection is a 3-year extension, pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (the ''Act''), of the current generic survey clearance previously approved by the Office of Management and Budget (''OMB''). The clearance is used by the U.S. International Trade Commission (''Commission'') to issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for a series of import injury investigations that are required by the Tariff Act of 1930 and the Trade Act of 1974. The current generic survey clearance is assigned OMB control No. 3117–0016; it will expire on June 30, 2008. Comments concerning the proposed information collections are requested in accordance with section 3506(c)(2)(A) of the Act; such comments are described in greater detail in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

DATES: Written comments should be received not later than 60 days after publication of this notice on the **Federal Register** to be assured of consideration.

ADDRESSES: Signed comments should be submitted to Marilyn Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collections may be obtained from: Debra Baker, Office of Investigations, U.S. International Trade Commission (telephone No. 202–205–3180; e-mail address: *Debra.Baker@usitc.gov*). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other technological forms of information technology, e.g., permitting electronic submission of responses).

Summary of the Proposed Information Collections

(1) Need for the Proposed Information Collections

The information requested in questionnaires and five-year sunset review institution notices issued under the generic survey clearance is utilized by the Commission in the following statutory investigations: Antidumping duty, countervailing duty, escape clause, North American Free Trade Agreement (NAFTA) safeguard, market disruption, and interference-with-programs of the U.S. Department of Agriculture (USDA). The Commission's generic survey clearance to issue questionnaires will not apply to repetitive questionnaires such as those issued on a quarterly or annual basis or to other investigations and research studies conducted under section 332 of the Trade Act of 1974.

The information provided by firms in response to the questionnaires provides the basis for the Commission's determinations in the above-cited statutory investigations. The submitted data are consolidated by Commission staff and provided to the Commission in the form of a staff report. In addition, in the majority of its investigations, the Commission releases completed questionnaires returned by industry participants to representatives of parties to its investigations under the terms of an administrative protective order, the terms of which safeguard the confidentiality of any business proprietary or business confidential information. Representatives of interested parties also receive a confidential version of the staff report under the administrative protective order. Subsequent party submissions to the Commission during the investigative process are based, in large part, upon their review of the information collected.

Included in the proposed generic clearance are the institution notices for the five-year sunset reviews of antidumping and countervailing duty orders and suspended investigations.

Responses to the institution notices will be evaluated by the Commission and form much of the record for its determinations to conduct either expedited or full five-year sunset reviews of existing antidumping and countervailing duty orders.

(2) Information Collection Plan

Questionnaires for specific investigations are sent to all identified domestic producers manufacturing the product(s) in question. Importer and purchaser questionnaires are also sent to all substantial importers/purchasers of the product(s). Finally, all foreign manufacturers of the product(s) in question that are represented by counsel are sent questionnaires, and, in addition, the Commission attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and/or other for-profit institutions; responses are mandatory.

The institution notices for the five-year sunset reviews are published in the **Federal Register** and solicit comment from interested parties (i.e., U.S. producers within the industry in question as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

(3) Description of the Information To Be Collected

Although the content of each questionnaire will differ based on the needs of a particular investigation, questionnaires are based on long-established, generic formats. Producer questionnaires generally consist of the following four parts: (part I) General questions relating to the organization and activities of the firm; (part II) data on capacity, production, inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the product in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. (Questionnaires may, on occasion, also contain part V, an abbreviated version of the above-listed parts, used for gathering data on additional product categories.)

Importer questionnaires generally consist of three parts: (part I) General questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the producer questionnaire.

Purchaser questionnaires generally consist of five parts: (part I) General questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm; (part III) market characteristics and purchasing practices; (part IV) comparisons between imported and U.S.-produced product; and (part V) actual purchase prices for specific types of domestic and subject imported products and the names of the firm's vendors.

Foreign producer questionnaires generally consist of (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and may include (part III) market factors.

The notices of institution for the five-year sunset reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

(4) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 183,000 burden hours on 4,900 respondents (i.e., recipients that provide a response to the Commission's questionnaires or the notices of institution of five-year sunset reviews). Table 1 lists the projected annual burden for each type of information collection for the July 2008–June 2011 period.

TABLE 1.—PROJECTED AVERAGE ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2008–JUNE 2011

Item	Producer questionnaires [1]	Importer questionnaires [2]	Purchaser questionnaires [3]	Foreign producer questionnaires [4]	Institution notices for 5-year reviews [5]	Total
	Estimated average burden hours imposed annually for July 2008–June 2011					
Number of respondents	1,021	1,469	1,140	1,180	86	4,896
Frequency of response	1	1	1	1	1	1
Total annual responses	1,021	1,469	1,140	1,180	86	4,896
Hours per response	49.2	42.5	24.5	34.5	14.8	37.3
Total hours	50,233	62,432	27,930	40,710	1,273	182,578

[1] *Producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 91 percent of the total producer questionnaire burden, outside review burden accounts for 6 percent of the total burden, and third-party disclosure burden accounts for the remaining 3 percent. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[2] *Importer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of importer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 98 percent of the total importer questionnaire burden, outside review burden and third-party disclosure burden each account for about 1 percent of the total burden. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[3] *Purchaser questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of purchaser respondents per case) and hours per response (responding firm burden). See definitions below. Purchasers are not interested parties to investigations by statute and typically do not engage outside counsel. Therefore, there is minimal outside review burden nor third-party disclosure burden for purchasers.

[4] *Foreign producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of foreign producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 62 percent of the total foreign producer questionnaire burden, outside review burden accounts for another 20 percent, and third-party disclosure burden accounts for 18 percent of the total burden.

[5] *Institution notices for 5-year sunset reviews.*—Estimates based upon the following variables: anticipated five-year review caseload, number of respondents to each notice, and responding firm burden.

Note.—Above estimates include questionnaires for specific investigations where the mailing list consists of fewer than 10 firms. In such instances the majority or all firms within the industry under investigation may be said to receive questionnaires.

Anticipated caseload.—Derived from current Commission budget estimates.

Number of respondents per case.—Defined as the number of firms which return completed questionnaires to the Commission. Current estimates of ''number of respondents per case'' for the questionnaires were derived from the number of respondents to Commission questionnaires issued under the generic clearances previously provided to the Commission.

Responding firm burden.—Defined as the time required by the firm which received the questionnaire to review instructions, search data sources, and complete and review its response. Commission questionnaires do not impose the burden of developing, acquiring, installing and utilizing technology and systems, nor require adjusting existing methodology or training personnel. Current estimates of ''responding firm burden'' for the questionnaires were derived from the actual burden reported by firms that responded to Commission questionnaires issued under the generic clearances previously provided to the Commission.

Outside review burden.—Time devoted by outside legal and financial advisors to reviewing questionnaires completed by the responding firms who are their clients prior to submitting them to the Commission.

Third-party disclosure burden.—Time required for outside legal advisors to serve their clients' questionnaires on other parties to the investigation or review under an administrative protective order.

(5) Minimization of Burden

The Commission periodically reviews its investigative processes, including data collection, to reduce the information burden. Questionnaires clearly state that estimates are acceptable for certain items. They are designed in part with check-in type formats to simplify the response. The reporting burden for smaller firms is reduced in that the sections of the questionnaire that are applicable to their operations are typically more limited. Requests by parties to expand the data collection or add items to the questionnaire for specific investigations may not be accepted if the Commission believes such requests will increase the response burden while not substantially adding to the investigative record.

The Commission's collection of data through its questionnaires does not currently involve the interactive use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. At this time, completed questionnaires are usually returned to the Commission in paper form, although there are several options available for filing electronically. Further, the information provided in response to its notices of institution for the five-year sunset reviews is typically submitted in document form directly to the Office of the Secretary although it may be submitted to the Commission's Electronic Data Information System (EDIS) and Electronic Docket.

Issued: November 30, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23598 Filed 12–5–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: COPS non-Hiring progress report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 30 days for public comment until January 7, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* COPS Non-Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and partner public safety agencies, institutions of higher learning and non-profit organizations that are recipients of COPS Non-Hiring Grants from Fiscal Year 2007 and forward.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 2,975 annual, quarterly, and final report respondents can complete the report in an average of one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,200 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 28, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–23683 Filed 12–5–07; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review—Controlled Substances Import/Export Declaration—DEA Form 236.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 4, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Controlled Substances Import/Export Declaration—DEA Form 236.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 236.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: DEA–236 provides the DEA with control measures over the importation and exportation of controlled substances as required by United States drug control laws and international treaties.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4868 respondents will respond annually, taking 18 minutes to complete each form.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,460.4 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 28, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–23680 Filed 12–5–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Registrants Inventory of Drugs Surrendered—DEA Form 41.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 4, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Registrants' Inventory of Drugs Surrendered—DEA Form 41.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 41.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Not-for-profit institutions, federal government, state, local or tribal government.

Abstract: Title 21 CFR 1307.21 requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit the form to the nearest DEA office. The DEA Form 41 is used to account for destroyed controlled substances, and its use is mandatory.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 22,500 respondents will respond annually, taking 30 minutes to complete each form.

(6) An estimate of the total public burden (in hours) associated with the collection: 11,250 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 28, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–23681 Filed 12–5–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 8–07]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, December 14, 2007, at 2:30 p.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed Decisions, and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 07–5982 Filed 12–4–07; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0102]

Agency Information Collection Activities: Existing Collection; Comment Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension and revision of existing collection(s). Prison Population Reports: Midyear Population Counts and Summary of Sentenced. Population Movement—National Prisoner Statistics.

The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 4, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially regarding the estimated public burden and associated response time, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Paige Harrison by e-mail at *paige.harrison@usdoj.gov* or at (202) 514–0809.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension and minor revision currently approved collection.

(2) *Title of the Form/Collection:* Prison Population Reports Midyear Counts; and Summary of Sentenced Population Movement—National Prisoner Statistics.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form number: NPS–1A; and NPS–1B. Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: *Primary: State Departments of Corrections. Others:* The Federal Bureau of Prisons. For the NPS–1A form, 51 central reporters (one from each State and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of June 30, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less, and unsentenced inmates; and

(b) The number of male and female inmates in their custody with maximum sentences of more than one year, one year or less, and unsentenced inmates; and

(c) The number of male and female inmates under their jurisdiction housed in privately-operated facility, either in state or out of state;

(d) The number of male and female inmates in their custody by race and Hispanic origin;

(e) The number of male and female inmates under the age of 18 held in their system; and

(f) The number of male and female non-citizen inmates held in their system.

For the NPS–1B form, 51 central reporters (one from each and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: New court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following categories: Expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(g) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond to both forms: 51 respondents each taking an average 8.0 total hours to respond (1.5 hours for the NPS–1A and 6.5 hours for the NPS–1B). Burden hours are up by 255 hours under this clearance because we are adding the elements from the NPS–1 form (approved under OMB number 1121–0078), with 51 respondents each taking an estimated 6 hours to complete. However, we are also eliminating the previous NPS–1B form due to redundancy, 51 respondents at 1.5 hours each, thus reducing the overall burden of the NPS series by 76.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 408 annual burden hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 30, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–23677 Filed 12–5–07; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–085)]

NASA Advisory Committee; Renewal of NASA's Aerospace Safety Advisory Panel Charter

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the Charter of the Aerospace Safety Advisory Panel.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Aerospace Safety Advisory Panel is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of this panel is unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4510.

SUPPLEMENTARY INFORMATION: Information regarding the Aerospace Safety Advisory Panel is available on the World Wide Web at: *http://www.hq.nasa.gov/office/oer/asap/index.html.*

Dated: November 28, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–23693 Filed 12–5–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 31, 2007, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 30, 2007 to: Christopher Linder, Permit No. 2008–030.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–23585 Filed 12–5–07; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Regulatory Commission.

TIME AND DATE: 10 a.m., Tuesday, December 11, 2007.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agency organization.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

Dated: Monday, December 4, 2007.

Steven W. Williams,

Secretary.

[FR Doc. 07–5976 Filed 12–4–07; 2:25 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

NAR Exemptive Request; OMB Control No. 3235–XXXX; SEC File No. 270–573.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for pre-approval of an exemptive request by the National Association of Realtors® (''NAR'') pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Background

NAR has requested an exemption pursuant to Sections 15(a)(2) and 36(a) of the Exchange Act from the broker-dealer registration requirements of Section 15(a)(1) and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply to a broker or dealer that is not registered with the Commission. Subject to the conditions specified in NAR's application (''Application''), the requested exemption would allow any licensed real estate agent or broker who is predominantly engaged in and has substantial experience in the sale of commercial real estate (''Commercial Real Estate Professional'') and the real estate brokerage firm with which he or she is licensed (''Real Estate Firm'') (collectively, a ''RE Participant'') to receive a real estate advisory fee (''Real Estate Advisory Fee'') from a purchaser of an undivided tenant-in-common interest in real property (''TIC Interest'') that is offered and sold together with other arrangements that cause it to be deemed to be a security under the federal securities laws (''TIC Security'').

Under NAR's exemptive request, a Real Estate Advisory Fee could be paid by the purchaser directly or on behalf of the purchaser by the sponsor or issuer of the TIC Security, which could, thereby, reduce the commission or other compensation received by a registered broker-dealer involved in the TIC Security transaction. The Real Estate Advisory Fee generally would be paid to the Real Estate Firm with which the Commercial Real Estate Professional is licensed. The Firm would distribute all or a previously agreed upon percentage of the Real Estate Advisory Fee to the Commercial Real Estate Professional that signed a buyer's agent agreement with the client and to any other Commercial Real Estate Professional or Real Estate Firm that was added to the agreement with the consent of the client.

Proposed Collections of Information

The requested exemption would contain five collections of information. First, the requested exemption would require a RE Participant to deliver a copy of the executed buyer's agent agreement to the registered broker-dealer acting as a placement agent (''Lead Placement Agent''). The purpose of the first collection is to assist in implementing the requested exemption and monitoring for compliance with the exemption's conditions. The proposed delivery requirement is designed to ensure that the Lead Placement Agent has a copy of the buyer's agent agreement in order to comply with its recordkeeping obligations discussed below, which would facilitate monitoring for compliance. Without this collection of information, the Commission and applicable self-regulatory organization (''SRO'') would be unable to monitor the Lead Placement Agent's compliance.

Second, the requested exemption would require any Commercial Real Estate Professional that is to receive, directly or indirectly, a portion of a Real Estate Advisory Fee to not be subject to any ''statutory disqualification,'' as defined in Section 3(a)(39) of the Exchange Act (other than subparagraph (E) of that section), and to deliver a representation in writing to that effect to the Lead Placement Agent at closing. The purpose of the second collection is to ensure that the Lead Placement Agent has a copy of the statutory disqualification representation in order to comply with its recordkeeping obligations, which would facilitate monitoring for compliance with the conditions of the requested exemption. Without this collection of information, the Commission and applicable SRO would be unable to monitor the Lead Placement Agent's compliance.

Third, the requested exemption would require broker-dealers that sell the TIC Securities as participating brokers (''Selling Broker-Dealers'') to deliver a representation in writing that the Selling Broker-Dealer performed a suitability analysis to the Lead Placement Agent at closing, or, if the Selling Broker-Dealer is the Lead Placement Agent, to make such a representation in writing at closing. The purpose of the third collection is to ensure that the Lead Placement Agent has a copy of the suitability analysis in order to comply with its recordkeeping obligations, which would facilitate monitoring compliance with the conditions of the requested exemption. Without this collection of information, the Commission and applicable SRO would be unable to monitor the Lead Placement Agent's compliance and would be unable to ensure that the Selling Broker-Dealer had conducted an appropriate suitability analysis.

Fourth, the requested exemption would require a Selling Broker-Dealer that determines that a TIC Security transaction is not suitable to obtain a written affirmation that the customer wants to proceed with the TIC Security transaction notwithstanding the Selling Broker-Dealer's determination. It also would require the Selling Broker-Dealer to deliver the written affirmation to the Lead Placement Agent at closing or, if the Selling Broker-Dealer is the Lead Placement Agent, to maintain the written affirmation consistent with the record retention provisions of Exchange Act Rule 17a–4. The purpose of the fourth collection is to ensure that the customer is informed if a Selling Broker-Dealer determines a transaction is not suitable, and, if the customer wants to proceed with the transaction, that the customer has made such a decision in light of the broker-dealer's determination. In addition, the proposed delivery requirement is designed to ensure that the Lead Placement Agent has a copy of the customer affirmation in order to comply with its recordkeeping obligations, which would facilitate monitoring for compliance with the conditions of the requested exemption. Without this collection of information, the Commission and applicable SRO would be unable to monitor the Lead Placement Agent's compliance and would be unable to ensure that the Selling Broker-Dealer had conducted a suitability analysis and informed the client of this determination.

Fifth, the requested exemption would require the Lead Placement Agent to maintain a copy of each of the documents that is to be made and/or

delivered at closing, as discussed above (i.e., the buyer's agent agreement, the statutory disqualification representations, the suitability representation, and, if applicable, the customer's written affirmation), and the relevant part of the real estate closing documents that evidences the amount of the Real Estate Advisory Fee paid to any RE Participant involved in the TIC Security transaction. The purpose of the fifth collection is to facilitate monitoring for compliance with the conditions of the requested exemption by compelling the Lead Placement Agent to maintain records of all documents that are required to be delivered at closing. Without this collection of information, the Commission and applicable SRO would be unable to monitor the Lead Placement Agent's compliance.

Estimate of Respondent Reporting Burden

a. Delivery of the Buyer's Agent Agreement to the Lead Placement Agent

The Commission estimates that approximately 800 RE Participants would rely on the requested exemption and each RE Participant would on average deliver to the Lead Placement Agent a copy of an executed buyer's agent agreement 6.63 times [1] a year. Based on these estimates, the Commission estimates that this requirement would result in approximately 5,304 disclosures [2] per year. The Commission also estimates that a RE Participant would spend approximately five minutes per disclosure to the Lead Placement Agent. Thus, the estimated total annual reporting and recordkeeping burden for this requirement is 442 hours [3] for the RE Participants.

b. Delivery of Statutory Disqualification

The Commission estimates that approximately 800 Commercial Real Estate Professionals would rely on the requested exemption and each Commercial Real Estate Professional would on average deliver the written statutory disqualification representation 6.63 times [4] a year. Based on these estimates, the Commission anticipates that this requirement would result in 5,304 disclosures [5] per year. The Commission estimates that approximately 95 percent of Commercial Real Estate Professionals would spend approximately five minutes for each representation to the Lead Placement Agent. The Commission also estimates that approximately five percent of Commercial Real Estate Professionals would spend approximately 30 minutes for their first representation to the Lead Placement Agent, and five minutes for each of the 5.63 subsequent representations. Thus, the estimated total annual reporting and recordkeeping burden for these requirements is 458.67 hours [6] for Commercial Real Estate Professionals.

c. Suitability Determination by the Selling Broker-Dealer

The Commission estimates that approximately 150 Selling Broker-Dealers would either deliver or make a representation at closing and each Selling Broker-Dealer would on average deliver or make such a representation 33.59 times [7] a year. The Commission also estimates that a Selling Broker-Dealer would spend approximately five minutes on each disclosure. Thus, the estimated total annual reporting and recordkeeping burden for this requirement is 419.90 hours [8] for Selling Broker-Dealers.

d. Customer Affirmation by the Selling Broker-Dealer

The Commission estimates that there are approximately 150 Selling Broker-Dealers that are potential respondents, those Selling Broker-Dealers would obtain and then deliver or maintain a written affirmation from 265.20 customers who are clients [9] of Commercial Real Estate Participants a year, and each Selling Broker-Dealer would on average obtain and then deliver or maintain such an affirmation 1.77 [10] times a year. The Commission also estimates that a customer would spend approximately 30 minutes on each disclosure and the Selling Broker-Dealer would spend approximately 35 minutes on each disclosure. Thus, the estimated total annual reporting and recordkeeping burden for this proposed requirement is an aggregate of 132.60 hours for customers [11] and 154.70 hours for the Selling Broker-Dealers.[12]

e. Recordkeeping by the Lead Placement Agent

The Commission estimates that approximately 45 Lead Placement Agents would act pursuant to the requested exemption. On average, a Lead Placement Agent would maintain copies of the relevant documents for approximately 117.87 TIC Security transactions [13] a year. The Commission also estimates that a Lead Placement Agent would spend 10 minutes per closing to maintain a copy of these documents. Thus, the estimated total annual reporting and recordkeeping burden for this requirement is 884 hours.[14]

f. Aggregated Burdens for Entering Data into ROCIS.

For purposes of entering the above collections into the OMB ROCIS system, the burdens discussed above have been summarized and aggregated as follows. There are approximately 995 total respondents.[15] There are approximately 21 responses for each respondent.[16] There are approximately 20,895 total responses.[17] Thus, there are approximately .11 hours per response

[1] The Commission is estimating approximately 5,304 TIC Security transactions would occur under the requested exemption. Accordingly, 5,304 TIC Security transactions/800 RE Participants = 6.63. For purposes of this Statement, the Commission has rounded all of its calculations to two decimal places.

[2] $6.63 \times 800 = 5{,}304$.

[3] 5,304 TIC Security transactions × five minutes per transaction = 26,520/60 = 442.

[4] 5,304 TIC Security transactions/800 Commercial Real Estate Professionals = 6.63.

[5] $6.63 \times 800 = 5{,}304$.

[6] $800 \times .95 \times 6.63 \times 5 = 25{,}194/60 = 419.90$ total burden hours for 95 percent of the Commercial Real Estate Professionals. $800 \times .05 \times 1 \times 30 = 1{,}200/60 = 20$ hours for the first representation by five percent of the Commercial Real Estate Professionals. $800 \times .05 \times 5.63 \times 5 = 1{,}126/60 = 18.77$ hours for the second and third representations by five percent of the Commercial Real Estate Professionals. Thus total burden hours would be 419.90 + 20 + 18.77 = 458.67.

[7] The Commission estimates that there would be approximately 5,304 TIC Security transactions a year. Thus, a Selling Broker-Dealer would make or deliver approximately ((5,304 × .95)/150) = 33.59 determinations.

[8] (5,304 × .95) × five minutes per transaction = 25,194/60 = 419.90.

[9] The Commission estimates that approximately five percent of all proposed TIC Security transactions would be determined to be not suitable. 5,304 × .05 = 265.20.

[10] The Commission estimates that there would be approximately 5,304 TIC Security transactions under the requested exemption. The Commission estimates that Selling Broker-Dealers would obtain and then deliver or maintain the customer affirmation in five percent of all transactions under the requested exemption. Thus, a Selling Broker-Dealer would obtain approximately ((5,304 × .05)/150) = 1.77 affirmations a year.

[11] 265.20 TIC Security transactions (5,304 × .05) × 30 minutes per transaction = 7956/60 = 132.60.

[12] 265.20 TIC Security transactions (5,304 × .05) × 35 minutes per transaction = 9282/60 = 154.70.

[13] 5,304 TIC Security transactions/45 Lead Placement Agents = 117.87.

[14] 5,304 TIC Security transactions × 10 minutes = 53,040/60 = 884.

[15] 800 + 150 + 45 = 995.

[16] 20,895 (total responses)/995 (total respondents) = 21. Although total responses should be 21,216 ((800 × 6.63) + (800 × 6.63) + (150 × 33.59) + (150 × 1.77) + (45 × 117.87)), the number has been reduced to 20,895 to ensure consistency with the other data, specifically the 21 responses per respondent and .11 hours per respondent, being entered into ROCIS.

[17] 995 (total respondents) × 21 (responses per respondent) = 20,895.

for each respondent.[18] There are approximately 2,298 total burden hours for all respondents.[19]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: November 29, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23607 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 425; OMB Control No. 3235–0521; SEC File No. 270–462.

Notice is hereby given, that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. Approximately 3,700 issuers file communications under Rule 425 at an estimated .25 hours per response for a total of 925 annual burden hours.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 29, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23609 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation C; OMB Control No. 3235–0074; SEC File No. 270–68.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Regulation C (17 CFR 230.400 through 230.498) provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. The information provided is mandatory. Regulation C is assigned one burden hour for administrative convenience because it does not directly impose information collection requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an e-mail to *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Office, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 30, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23641 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28069]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 30, 2007.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2007. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request,

[18] 2,359 (total burden hours)/20,895 (total respondents) = 0.11.

[19] 20,895 (total responses) × .11 (hours per respondent) = 2,298.45. For purposes of entering this number into ROCIS, it has been rounded to 2,298.

personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2007, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

International Equity Portfolio [File No. 811–8434]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 1, 2001, applicant made a liquidating distribution to its interest holders, based on net asset value. Any expenses incurred in connection with the liquidations were paid by applicant's holders of beneficial interest.

Filing Dates: The application was filed on November 7, 2007, and amended on November 21, 2007.

Applicant's Address: 125 Broad St., New York, NY 10004.

Small Cap Growth Portfolio [File No. 811–7269]; The Premium Portfolios [File No. 811–8436]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 1, 2001, each applicant made a liquidating distribution to its interest holders, based on net asset value. Any expenses incurred in connection with the liquidations were paid by each applicant's holders of beneficial interest.

Filing Date: The applications were filed on November 7, 2007.

Applicants' Address: 125 Broad St., New York, NY 10004.

Government Income Portfolio [File No. 811–8438]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 18, 2002, applicant made a liquidating distribution to its interest holders, based on net asset value. Any expenses incurred in connection with the liquidation were paid by applicant's holders of beneficial interest.

Filing Date: The application was filed on November 7, 2007.

Applicant's Address: 125 Broad St., New York, NY 10004.

CitiFunds Tax Free Reserves [File No. 811–3893]; CitiFunds Multi-State Tax Free Trust [File No. 811–4596]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 7, 2001, each applicant transferred its assets to CitiFunds Trust III, based on net asset value. Expenses incurred in connection with each reorganization were paid by applicants.

Filing Date: The applications were filed on November 7, 2007.

Applicants' Address: 125 Broad St., New York, NY 10004.

CitiFunds Fixed Income Trust [File No. 811–5033]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 18, 2002, applicant transferred its assets to Salomon Brothers U.S. Government Income Fund, a series of Salomon Brothers Series Funds Inc., based on net asset value. Expenses incurred in connection with the reorganization were paid by Citi Fund Management Inc., applicant's investment adviser, and Salomon Brothers Asset Management Inc., the acquiring fund's investment adviser.

Filing Date: The application was filed on November 7, 2007.

Applicant's Address: 125 Broad St., New York, NY 10004.

CitiFunds International Trust [File No. 811–6154]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2002, applicant transferred its assets to Smith Barney Trust II, based on net asset value. Expenses incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on November 7, 2007.

Applicant's Address: 125 Broad St., New York, NY 10004.

Adjustable Rate Securities Portfolios [File No. 811–6242]

Summary: Applicant, a master fund in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On October 26, 2005, applicant made a liquidating distribution to its sole feeder fund, based on net asset value. Expenses of $142,494 incurred in connection with the liquidation were paid by applicant, its feeder fund and Franklin Advisers, Inc., applicant's investment adviser.

Filing Dates: The application was filed on August 20, 2007, and amended on November 7, 2007.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

Atlas Funds [File No. 811–5485]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 30, 2007, two series of applicant, Atlas Money Market Fund and Atlas California Money Market Fund, made a liquidating distribution to their shareholders, based on net asset value. Between May 11, 2007 and May 25, 2007, all of applicant's remaining series transferred their assets to corresponding series of Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen International Trust, Evergreen Fixed Income Trust and Oppenheimer Strategic Income Fund, based on net asset value. Expenses of $2,157,929 incurred in connection with the liquidation and reorganization were paid by Evergreen Investment Management Company, LLC, investment adviser to the surviving series, and its affiliates.

Filing Dates: The application was filed on October 18, 2007, and amended on November 13, 2007.

Applicant's Address: 794 Davis St., San Leandro, CA 94577.

Colonial Insured Municipal Fund [File No. 811–9533]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 25, 2007, applicant distributed to the holders of its preferred shares an amount equal to the liquidation preference of its preferred shares, plus an amount equal to the accumulated but unpaid dividends on those shares. On May 30, 2007, applicant made a liquidating distribution to its common shareholders, based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on November 6, 2007.

Applicant's Address: One Financial Center, Boston, MA 02111.

BlackRock Basic Value Fund II, Inc. [File No. 811–9957]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 2007, applicant transferred its assets to BlackRock Basic Value Fund, Inc., based on net asset value. Expenses of $91,334

incurred in connection with the reorganization were paid by BlackRock, Inc., the parent company of applicant's investment adviser, or its affiliates.

Filing Dates: The application was filed on September 21, 2007, and amended on November 6, 2007.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Hallmark Equity Series Trust [File No. 811–7734]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 10, 2007, applicant transferred its assets to Roanoke Small-Cap Growth Fund, a series of Northern Lights Fund Trust, based on net asset value. Expenses of $21,359 incurred in connection with the reorganization were paid by Reserve Management Corporation, an affiliate of applicant.

Filing Dates: The application was filed on October 5, 2007, and amended on November 6, 2007.

Applicant's Address: The Reserve, 1250 Broadway, New York, NY 10001.

Hallmark Investment Series Trust [File No. 811–879]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By June 28, 2007, each series of applicant had made a liquidating distribution to its shareholders, based on net asset value. Expenses of $14,105 incurred in connection with the liquidation were paid by Reserve Management Corporation, an affiliate of applicant.

Filing Dates: The application was filed on October 5, 2007, and amended on November 6, 2007.

Applicant's Address: The Reserve, 1250 Broadway, New York, NY 10001.

Merit Advisors Investment Trust [File No. 811–21495]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2006, applicant made a liquidation distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2007, and amended on October 31, 2007.

Applicant's Address: 13905A Quail Creek Rd., Oklahoma City, OK 73134–1002.

Merit Advisors Investment Trust II [File No. 811–21520]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 28, 2007, and amended on October 31, 2007.

Applicant's Address: 13905A Quail Creek Rd., Oklahoma City, OK 73134–1002.

Lazard Global Mid Cap Fund, Inc. [File No. 811–21683]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 6, 2007, and amended on November 6, 2007.

Applicant's Address: c/o Lazard Asset Management, LLC, 30 Rockefeller Plaza, New York, NY 10112.

WhiteRock Portfolio Investors, L.L.C. [File No. 811–9104]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 30, 2007, and amended on October 31, 2007 and November 2, 2007.

Applicant's Address: 825 NE Multnomah, Suite 1900, Portland, OR 97232.

Separate Account AIA of Integrity Life Insurance Company [File No. 811–5431]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, Applicant had no shareholders or contract owners.

Filing Date: The application was filed on August 14, 2007 and amended on October 16, 2007 and November 19, 2007.

Applicant's Address: 400 Broadway, Cincinnati, OH 45202.

Separate Account AII of Integrity Life Insurance Company [File No. 811–5432]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, Applicant had no shareholders or contract owners.

Filing Date: The application was filed on August 14, 2007 and amended on October 16, 2007 and November 19, 2007.

Applicant's Address: 400 Broadway, Cincinnati, OH 45202.

Principal Aggressive Growth Fund, Inc. [File No. 811–8176]; Principal Asset Allocation Fund, Inc. [File No. 811–8178]; Principal Balanced Fund, Inc. [File No. 811–5073]; Principal Bond Fund, Inc. [File No. 811–5173]; Principal Emerging Growth Fund, Inc. [File No. 811–5170]; Principal Government Securities Fund, Inc. [File No. 811–4916]; Principal Growth Fund, Inc. [File No. 811–8180]; Principal High Yield Fund, Inc. [File No. 811–5175]; Principal Money Market Fund, Inc. [File No. 811–3546]; Principal World Fund, Inc. [File No. 811–8182]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1997, each applicant transferred its assets to a corresponding series of the Principal Variable Contracts Fund, Inc. at net asset value. Expenses were allocated among the applicants in proportion to the ratio of the assets of each applicant to the assets of all the applicant determined as of July 22, 1997. Shareholders of the Applicants paid $12,135, $1,009, $7,059, $4,276, $11,726, $6,672, $8,365, $0, $3,598, $6,409, respectively, and Principal Management Corporation, the investment adviser, paid $8,122, $4,675, $4,725, $2,862, $7,849, $4,466, $5,599, $0, $2,408, $4,290, respectively.

Filing Dates: The applications were filed on August 9, 2007, and amended on November 14, 2007.

Applicants' Address: 711 High Street, Des Moines, Iowa 50392–2080.

Separate Account VUL of National Integrity Life Insurance Co. [File No. 811–4667]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, Applicant had no shareholders or contract owners.

Filing Date: The application was filed on August 14, 2007 and amended on October 16, 2007.

Applicant's Address: 400 Broadway, Cincinatti, OH 45202.

Select Ten Plus Fund, LLC [File No. 811–9179]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on

abandonment of registration. At the time of filing, Applicant had no shareholders or contract owners.

Filing Date: The application was filed on August 14, 2007 and amended on October 16, 2007.

Applicant's Address: 400 Broadway, Cincinnati, OH 45202.

CILCONY Variable Separate Account [File No. 811–21620]

Summary: Applicant, a separate account of Protective Life Insurance Company of New York (''PLICONY''), seeks an order declaring that it has ceased to be an investment company. On June 11, 2007, at a meeting of the Board of Directors of PLICONY (''Board''), the Board approved a resolution to close the Applicant and to file the application to deregister the Applicant. Applicant states that it has no shareholders as there was never a public offering of the securities and no shares were ever sold.

Filing Date: The application was filed on August 15, 2007.

Applicant's Address: Protective Life Insurance Company of New York (formerly Chase Insurance Life Company of New York), 2500 Westfield Drive, Elgin, IL 60123–7836.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23613 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28071; 812–13450]

Unified Series Trust and Envestnet Asset Management, Inc.; Notice of Application

November 30, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order permitting them to enter into and materially amend subadvisory agreements without shareholder approval and granting relief from certain disclosure requirements.

APPLICANTS: Unified Series Trust (''Trust'') and Envestnet Asset Management, Inc. (''Adviser'').

FILING DATES: The application was filed on November 14, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by December 26, 2007 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Dee Anne Sjogren, Thompson Coburn LLP, One U.S. Bank Plaza, St. Louis, MO 63101.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is organized as Ohio business trust and is registered under the Act as an open-end management investment company. The Adviser, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Trust currently offers a number of series, each with its own investment objective(s), policies and restrictions. The Adviser will serve as the investment adviser to two of the series of the Trust (each, a ''Fund,'' and collectively, the ''Funds''). The Adviser will enter into an investment advisory agreement with the Trust for each Fund (each, an ''Advisory Agreement,'' and collectively, the ''Advisory Agreements'') approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), and the shareholders of each Fund.[1]

3. The Advisory Agreement permits the Adviser to enter into separate advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers''). Each Subadviser will be registered under the Advisers Act. The specific investment decisions for each Fund using a Subadviser will be made by that Subadviser, who will be granted discretionary authority to invest the assets, or a portion of the assets, of a particular Fund, subject to the general supervision by the Adviser and the Board. The Adviser will select Subadvisers based on an evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style and will recommend their hiring to the Board. Subadvisers must be approved by the Board, including a majority of the Independent Trustees. The Adviser will monitor and evaluate the performance of Subadvisers and recommend to the Board their hiring, termination and replacement. The Adviser will compensate a Subadviser out of the management fee paid to the Adviser by the Fund under the Advisory Agreement.

4. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

5. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by the Adviser to the Subadvisers. An

[1] Applicants also request relief with respect to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions contained in the application (included in the term ''Funds''). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to such Fund, or a trademark or trade name owned by them, will precede the name of the Subadviser.

exemption is requested to permit each Fund to disclose (both as a dollar amount and as a percentage of the Fund's net assets) the: (a) aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, ''Aggregate Fee Disclosure''). If a Fund employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholders reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the Funds' shareholders rely on the Adviser to select and monitor the Subadvisers best suited to achieve a Fund's investment objectives. Applicants contend that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary costs and delays on the Funds and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Subadvisers use a ''posted'' rate schedule to set their fees. Applicants state that, while Subadvisers are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Subadvisers to negotiate lower subadvisory fees with the Adviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before such Fund's shares are offered to the public.

2. The prospectus for each Fund will disclose the existence, substance and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Subadviser, the affected Fund's shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser, without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable period.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (c) where appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies, and restrictions.

11. No trustee or officer of the Trust or a Fund or director or officer of the Adviser will own any interest in a Subadviser, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23722 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice of Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:

STATUS: Closed Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, December 6, 2007 at 2 p.m.

CHANGE IN THE MEETING: Deletion of an Item.

The following item will not be considered during the Closed Meeting on Thursday, December 6, 2007:

A matter involving enforcement techniques

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 4, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23789 Filed 12–4–07; 12:58 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56861; File No. SR–Amex–2007–127]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Conforming Changes to Amex Rules Relating to the Amex Book Clerk Program

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2007, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain non-substantive housekeeping changes to Amex rules, to conform to the recent approval of the Amex Book Clerks program. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved the Exchange's proposal (the ''ABC Proposal'') to eliminate the agency obligations of specialists and establish Amex Book Clerks (''ABCs'').[5] In connection with the ABC Proposal, the Exchange submitted a related filing limiting the liability of the Exchange for the actions of ABCs, which was also recently approved.[6]

The Exchange proposes to make certain non-substantive housekeeping changes to Amex rules, including Rule 995–ANTE, governing ABCs, and Rule 996–ANTE, governing the liability of the Exchange in connection with ABCs.

Specifically, the Exchange proposes to delete paragraph (d) in Rule 995–ANTE, governing the liability of the Exchange for the actions of ABCs, since this text is included in new Rule 996–ANTE. Given the date of the approval order, the Exchange also proposes to extend the date by which the Exchange shall assign an ABC to each applicable trading station from November 30, 2007 to May

[5] *See* Securities Exchange Act Release No. 56804 (November 16, 2007), 72 FR 66002 (November 26, 2007) (SR–Amex–2006–107).

[6] *See* Securities Exchange Act Release No. 56805 (November 16, 2007), 72 FR 65773 (November 23, 2007) (SR–Amex–2007–122).

1, 2008.[7] The Exchange also proposes to amend Rule 996–ANTE to replace the references to Amex Rule 960 with the correct reference to Amex Rule 970.

While the ABC Proposal was pending with the Commission, the Exchange filed an unrelated proposal to establish the Exchange's Directed Order Program, which was separately codified as Rule 996–ANTE.[8] The Exchange proposes to correct this duplicate designation by renumbering the version of Rule 996–ANTE that governs the Exchange's Directed Order Program as Rule 997–ANTE. The Exchange also proposes a conforming change to correct a cross-reference in Rule 935–ANTE.

Finally, the Exchange proposes to renumber Commentary .03 to Rule 958A–ANTE regarding timing of firm quote obligations for orders received by the ABC as Commentary .04, also to correct an erroneous duplicate designation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engage in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day pre-operative waiting period will allow immediate clarification of Amex rules regarding ABCs, by deleting duplicative text, fixing duplicative numbering, and clarifying the date by which the Exchange shall assign an ABC to each applicable trading station under the ABC proposal. Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2007–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at

[7] As noted in the ABC Proposal, the Exchange proposes to implement this rule change to all applicable trading posts over a 180-day period.

[8] *See* Securities Exchange Act Release No. 56269 (August 15, 2007), 72 FR 47086 (August 22, 2007) (approving SR–Amex–2007–75).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Rule 19b–4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[14] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–127 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23589 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56868; File No. SR–Amex–2007–125]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Riskless Principal and Other Exceptions to Amex Rules Prohibiting Members' Proprietary Trading While in Possession of Like or Better-Priced Customer Orders

November 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 16, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Amex. The Amex has submitted the proposed rule change under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt changes to Rules 24—AEMI, ''Limitations on Members' Trading Because of Customers' Orders,'' 151—AEMI, ''Purchases and Sales While Holding Unexecuted Market Order,'' and 152—AEMI, ''Taking or Supplying Stock to Fill Customer's Order,'' to: (i) provide for a ''riskless principal'' and other exceptions to the Amex's general rules against members entering proprietary orders while in possession of a customer order that could trade at the same price; and (ii) make various ''housekeeping'' changes to eliminate duplicative or unnecessary portions of the AEMI rules.

The text of the proposed rule change is available at *http://www.amex.com*, the principal offices of the Amex, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

To provide greater flexibility in trading methods available on the Amex, while still sufficiently protecting customer orders, the Amex proposes to adopt a ''riskless principal'' and other exceptions detailed below to its general rules against a member entering a proprietary order while in possession of a customer order that could trade at the same price. These new exceptions, which are the same as those adopted by the New York Stock Exchange LLC (''NYSE'') in July 2007,[5] will be added to Rule 24—AEMI (which is the Amex equivalent of NYSE Rule 92, ''Limitations on Members' Trading Because of Customers' Orders'') and will promote regulatory consistency. Additionally, the Amex proposes to make certain housekeeping changes occasioned by the changes to Rule 24—AEMI. Among other things, the Amex proposes to: (i) Eliminate Rule 150—AEMI, which substantially overlaps with and is being folded into Rule 24—AEMI; and (ii) add a riskless principal exception to the general restrictions in Rule 152—AEMI against a member supplying/taking stock to fill a customer's order.

Riskless Principal Exception and Other Changes to Rule 24—AEMI

Rule 24—AEMI is substantially and structurally similar to the version of NYSE Rule 92 that existed until the NYSE amended its rule in July 2007.[6] In relevant part, the Amex intends to adopt the substance of those NYSE amendments to:

- Add a ''riskless principal'' exception that would allow a member to trade a security as principal while holding one or more customer orders in the security to permit the member to pass on to its customer(s) the prices received on the Exchange;[7]
- Amend certain customer consent requirements to allow a customer to give affirmative prior blanket—rather than order-by-order—consent to a member trading while in possession of a customer order, as permitted by the rule, provided that the requisite disclosures to the customer regarding potential trading-along, opt-out rights, and allocation methodology are periodically made[8] and such informed

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (order approving File No. SR–NYSE–2007–21); and 56088 (July 18, 2007), 72 FR 40351 (July 24, 2007) (notice of filing and immediate effectiveness of File No. SR–NYSE–2007–63).

[6] *See* note 5, *supra.*

[7] A member would be permitted to aggregate only those customer orders where the order types and instructions (including tick restrictions) permit such aggregation. Such aggregating meets the standards set forth in the July 18, 2005, no-action letter from the Division of Trading and Markets (''Division'') (f/k/a the Division of Market Regulation) to the Securities Industry Association (''SIA''), in which the Division granted a riskless principal exemption from Rule 10a–1 under the Act to permit a broker-dealer to fill a customer order without complying with the ''tick'' provisions of Rule 10a–1, in certain situations and subject to certain conditions. *See* letter from James Brigagliano, Assistant Director, Division, Commission, to Ira Hammerman, Senior Vice President and General Counsel, SIA, dated July 18, 2005.

[8] The required periodic disclosures would include affirmative notice of: (i) the fact that the member may trade along with the customer's order, subject to the customer's right to affirmatively opt-out of such trading-along on an order-by-order basis or to modify the instructions obtained under the blanket consent; and (ii) the method by which the member organization will allocate shares to the customer's order (including the allocation methodology for riskless principal transactions that include Rule 24—AEMI(b) proprietary orders and orders from customers that have and/or have not consented to trade along with such proprietary orders). The Exchange would not require a specific allocation methodology (*e.g.*, strict time priority, precedence based on size, *etc.*), but would require it to be fair and reasonable, consistently applied, consistent with the rules governing parity of orders, and not unfairly discriminatory against any particular class of accounts or types of orders.

customer consent has been documented; [9]

• Expand the class of customers eligible to give affirmative consent from institutional investors with 10,000-share orders or more to all institutional investors and individual investors with orders of 10,000 shares (worth at least $100,000) or more; and

• Add an exception which would permit specialists to trade proprietarily ahead of held customer orders 2½ hours after the close of regular trading and up to 15 minutes prior to the following trading day's opening, thereby better allowing the specialists to hedge their trading risk and bring their dealer accounts in line with trading in away markets.

According to the Amex, these changes will serve to harmonize Rule 24—AEMI with the guidelines of the Financial Industry Regulatory Authority, Inc. (''FINRA,'' f/k/a NASD) on members trading while in possession of customer orders, commonly known as the ''Manning Rule,'' [10] so as to provide a more consistent regulatory environment for broker-dealers. The Amex intends to make the same amendments in substance to its Rule 24—AEMI as the NYSE made to its Rule 92, with slight differences discussed below.

New NYSE Rule 92(c)(3) requires, among other things, that in order to avail itself of the riskless principal transaction:

> A member must submit a report of execution of the facilitated order to a designated Exchange database as required by NYSE Rule 123(f). The member must also submit to the same database, within such time frame and in such format as the Exchange may from time to time require, an electronic report containing data elements sufficient to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

The referenced ''Exchange database'' is the NYSE's Front End Systemic Capture (''FESC'') database. The Amex does not have a database that is able to capture order and execution data with respect to riskless principal transactions in the same manner as FESC. Accordingly, the Amex's regulatory staff will need to surveil for proper use of the new riskless principal exemption simultaneous with general surveillance of transactions where members trade ahead of customers orders under pre-existing exceptions to Rule 24—AEMI. Should a transaction appear to be a riskless principal transaction, Amex Regulation will validate that all elements required by the exception are met by requesting and reviewing supporting documentation from the members involved, rather than automatically surveilling for violations as the NYSE is presumably able to do with its FESC system. Accordingly, because technological differences require the development of a slightly different audit trail, Amex's corresponding paragraph in Rule 24—AEMI will state:

> A member or member organization must maintain a contemporaneous record of every execution on a riskless principal basis, which record shall be submitted to the Exchange within such time frame, in such format, and containing such information (in addition to any information required by Rule 153—AEMI) as the Exchange may from time to time require to validate the riskless principal nature of the transaction.

Other wording, structural, or grammatical differences between comparable sections of NYSE Rule 92 and Rule 24—AEMI are not intended to create substantive differences and are intended only to add clarity where the Amex thought necessary for its members.[11]

Housekeeping Changes

Existing Rule 24—AEMI substantially overlaps with existing Rule 150—AEMI, in that both rules recite the general prohibitions upon, and exceptions to, an Amex member trading a proprietary order while in possession of a customer order that could be executed at the same price. To eliminate future confusion, the Amex proposes to eliminate Rule 150—AEMI (which is a vestige of pre-AEMI Amex Rule 150) in favor of merging the two rules into Rule 24—AEMI (which was originally patterned after NYSE Rule 92). This will result in three exceptions being added to Rule 24—AEMI, but no substantive expansion of the list of exceptions available pre-amendment (except as noted above by expanding the exceptions to include the recent changes made to comparable NYSE Rule 92).[12]

Additionally, Commentary .06 to Rule 24—AEMI will now clarify that the riskless principal exception of new subsection (c)(10) applies only to orders entered from off the floor of the Exchange, and that specialists, in particular, remain bound by Rule 155—AEMI, ''Precedence Accorded to Orders Entrusted to Specialists,'' which contains no such exception (replacing existing Commentary .06, which deals with the interplay between the now-defunct Intermarket Trading System Plan and Rule 24—AEMI).

Finally, Rule 152—AEMI (originally patterned after NYSE Rule 91), which currently contains the general prohibitions upon, and exceptions to, supplying/taking stock to fill a customer's order, will be amended to incorporate the new riskless principal transaction exception, as such transactions, by definition, include a member supplying/taking stock to fill a customer's order.[13]

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[9] Acceptable documentation of customer consent following delivery of the required disclosures would be: (i) A signed writing from the customer that acknowledges receipt of the required disclosures and provides consent; or (ii) in the case of oral customer consent, by a written notice from the member sent to the customer documenting the provision of such required disclosures and such oral consent. Once a customer has provided affirmative consent and so long the firm continues to provide written disclosures on a periodic basis, the firm will not need to renew such affirmative consent.

[10] *See* FINRA IM 2110–2 and FINRA Rule 2111.

[11] For example, while the NYSE chose to make the riskless principal exception a separate subsection (c) to its Rule 92 (with the remaining exceptions listed in NYSE Rule 92(d)), Amex preferred to list all exceptions—including the riskless principal transaction exception—in the same subsection of its equivalent Rule 24—AEMI(c). For another example, NYSE Rule 92(b) begins:

> A member or member organization may enter a proprietary order while representing a customer order that could be executed at the same price, provided that the customer's order is designated not held and is for (i) an institutional account, or (ii) over 10,000 shares, unless such orders are less than $100,000 in value, and the member organization periodically provides written disclosures to its customers and obtains and documents affirmative customer consent, under the following conditions. * * *

Comparable Rule 24—AEMI(b), as proposed to be amended, provides:

> A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided:
>
> (1) The customer's order is designated not held and is (i) an institutional account, or (ii) over 10,000 shares (unless such orders are less than $100,000 in value); and the member organization has periodically provided written disclosures to such customer of the possibility and allocation methodology of its potential trading along and obtained and documented such customer's affirmative consent to same; and
>
> (2) one of the following conditions exists. * * *

[12] Note, however, that the former Rule 150—AEMI(c)(5) exception for a purchase or sale of an exchange-traded fund by a specialist where the specialist is on parity with another broker-dealer order pursuant to the Exchange's rules (*e.g.*, Rule 126—AEMI) has been incorporated in new Rule 24—AEMI(c)(7) as ''any purchase or sale of any security * * * by a specialist whose bid (offer) is on parity with a customer's order pursuant to Rule 126—AEMI.'' The new phrasing more accurately describes the operation and application of Rule 126—AEMI, under which a specialist has been and is permitted to trade on parity with a customer under a variety of circumstances broader than reflected in former Rule 150—AEMI(c)(5).

[13] The Amex notes that the NYSE did not so amend its comparable NYSE Rule 91, although it is not clear why.

2. Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS,[14] as well as section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No formal written comments were solicited or received with respect to the proposed rule change itself, but Amex staff have had numerous communications with representatives of the Securities Industry and Financial Markets Association, which have requested that the Amex amend its rules to match the recent changes to NYSE Rules 92, as described above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),[17] the Amex provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

The Amex has requested the Commission to waive the 30-day operative delay because of the commencement of full industry compliance with Rules 610 and 611 of Regulation NMS[20] and the broker-dealer community's desire to have the riskless principal exception in place at all automated market centers as soon as possible. In addition, the Amex states that the proposed changes are similar to those adopted by the NYSE and do not raise new issues.

The Commission hereby grants the Amex's request[21] and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the changes to Rule 24—AEMI are substantially similar to changes adopted previously by the NYSE.[22] The remaining changes to Rules 24—AEMI and 152—AEMI, and the elimination of Rule 150—AEMI, are designed to streamline and clarify the Amex's rules and do not raise new regulatory issues. For these reasons, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2007–125 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23593 Filed 12–5–07; 8:45 am]

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[14] 17 CFR 242.600 *et. seq.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 242.610 and 17 CFR 242.611.

[21] For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* note 5, *supra.*

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56853; File No. SR–Amex–2007–94]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Notes Linked to the Performance of the CBOE S&P 500 PutWrite Index (PUT℠)

November 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 20, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On November 27, 2007, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the CBOE S&P 500 PutWrite Index (PUT℠) (the ''PUT Index'' or ''Index''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis, for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the PUT Index (the ''Notes''). The PUT Index is determined, calculated and maintained solely by the Chicago Board Options Exchange, Inc. (''CBOE'').[4] Eksportfinans will issue the Notes under the name ''Eksportfinans Index-Linked Notes.''[5]

The Notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Notes are a series of medium-term debt securities of Eksportfinans that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the PUT Index as adjusted by an annual index fee (the ''Index Fee''). The principal amount of each Note is expected to be $20. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In particular, the value of the PUT Index must increase for the investor to receive at least the $20 principal amount per security at maturity.[8] The Notes will have a term of thirty (30) years. The Notes are not callable by the issuer; however, holders will be able to redeem the Notes in minimum aggregate amounts of $1,000 on a weekly basis.

The payment that a holder of a Note will receive at maturity or redemption (the ''Redemption Amount'') will depend on the relation of the final Index value (the ''Final Index Value'') to the closing value of the Index on the pricing date (the ''Initial Index Value'') of the PUT Index, as adjusted by the Index Fee (as defined below). For purposes of determining the amount payable at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29).

[4] If the CBOE discontinues publication of the Index and the CBOE or another entity publishes a successor or substitute index that the calculation agent determines, in its sole discretion, to be comparable to the Index (a ''Successor Index''), then the calculation agent may substitute the Successor Index as calculated by the CBOE or any other entity for the Index and calculate the Redemption Amount (as defined below) by reference to the Successor Index. In the event that the CBOE discontinues publication of the Index and (a) the calculation agent does not select or approve a Successor Index or (b) the Successor Index is no longer published on any of the relevant scheduled trading days, the calculation agent will compute a substitute level for the Index in accordance with the procedures last used to calculate the level of the Index before any discontinuation but using only those securities that comprised the Index prior to such discontinuation. If a Successor Index is selected or the calculation agent calculates a level as a substitute for the Index, the Successor Index or level will be used as a substitute for the Index for all purposes going forward even if CBOE elects to begin republishing the Index, unless the calculation agent decides to use the republished Index. If the CBOE discontinues publication of the Index and the calculation agent determines that no Successor Index is available at that time, then on each scheduled trading day until the earlier to occur of (a) the determination of the Redemption Amount or (b) a determination by the calculation agent that a Successor Index is available, the calculation agent will determine the level that would be used in computing the Redemption Amount as if that day were a scheduled trading day.

Eksportfinans, has been appointed to act as the calculation agent. Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division of Trading and Markets, Commission (''Division''), Commission, on October 31, 2007.

[5] Eksportfinans and Standard & Poor's (''S&P''), a division of the McGraw-Hill Companies, Inc. have entered into a non-exclusive license agreement providing for the use of the PUT Index by Eksportfinans in connection with certain securities including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

[6] Section 107A of the Company Guide provides the initial listing standards for the Notes. Section 107A requires: (1) A minimum public distribution of one million units; (2) a minimum of 400 public shareholders; and (3) a market value of at least $4 million. In addition, Section 107A provides a limited exception to the minimum public distribution and minimum public shareholder requirement if an issue is traded in thousand dollar denominations or if the securities are redeemable at the option of the holders on at least a weekly basis. Because the Notes will be redeemable on a weekly basis at the option of the holders, the exception to the minimum public distribution and public shareholder requirement in Section 107A will apply to the listing of the Notes. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division, Commission, on October 31, 2007.

maturity of the Notes, the Redemption Amount will be determined at the close of the markets on the maturity date (the ''Final Valuation Date).'' In the event that a market disruption event [9] occurs on the Final Valuation Date, such Final Valuation Date will be postponed to the next scheduled trading day on which no market disruption event occurs.

The Index Fee will be 1.0%.

A holder or investor on the maturity date will receive a Redemption Amount equal to:

$$\$20 \times \left(\frac{\text{Final Index Value}}{\text{Initial Index Value}} \right) - \text{Annual Index Fee}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the PUT Index. The Notes are designed for investors who desire exposure to a covered put selling options strategy on a broad market index and who are willing to forego principal protection and market interest payments on the Notes during their term.[10]

The Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.[11]

Description of the Index

The PUT Index is a benchmark index designed to measure the performance of a hypothetical investment strategy that overlays short S&P 500 puts over a money market account. Developed by the CBOE in cooperation with S&P, the Index was initially announced in April 2002. The PUT Index was set to an initial value of 100.00 as of June 1, 1988.[12] The Exchange states that the CBOE developed the PUT Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of put selling strategies. Further, the CBOE developed the PUT Index to provide investors with a relatively straightforward indicator of covered put selling which otherwise may seem complicated and inordinately risky.

The number of puts in the Index is set to collateralize the exposure to S&P 500 downturns. This design provides higher leverage than the BXM strategy [13] but will also capture the potentially ''rich'' options premium of S&P 500 put options. Short option strategies, and especially short put strategies, typically generate high risk-adjusted returns.

The PUT Index strategy invests cash at one- and three-month Treasury Bill rates and sells a sequence of one-month at-the-money S&P 500 puts (SPX). The short put position is collateralized by the Treasury bills.

The PUT Index portfolio is rebalanced on the third Friday of the month when the puts expire and new puts are sold. This procedure is referred to as the ''roll.'' On every third roll, the total cash in the PUT portfolio is reinvested at the three-month Treasury bill rate. The rebalanced portfolio is long three-month Treasury bills and short one-month SPX puts. On other roll dates, the cash obtained from selling new SPX puts is invested at the one-month Treasury bill rate, and the cash required to settle expiring in-the-money puts is financed first by one-month Treasury bills and second by three-month Treasury bills, if necessary. On such roll dates, the rebalanced portfolio is typically long one and three-month Treasury bills and short one-month SPX puts.

The theory of the PUT strategy is to trade a premium over Treasury bill rates for a leveraged exposure to S&P 500 downturns. It is expected that asset managers will find the PUT strategy a convenient method to utilize disposable cash to enhance returns.

From June 1988 to March 2007, the PUT Index had an annualized monthly return of 12.79% compared to 12.08% for the S&P 500 Total Return Index (SPTR), 11.91% for the BXM and 4.66% for three-month Treasury bills. The PUT Index had a smaller standard deviation than the BXM and SPTR.

As expected, PUT Index monthly returns tend to (a) increase with the return on the S&P 500, (b) be greater than the returns of the BXM and SPTR when SPTR returns are negative or small, and (c) be smaller when SPTR returns are larger. More specifically, the PUT Index tends to perform better when the monthly return of SPTR is at or below 2.5%. The solid relative performance of the PUT Index is explained by the fact that this occurred 67% of the time between June 1988 and March 2007.

Construction of PUT Index Portfolio

The PUT Index tracks the value of an initial investment of $100 in a portfolio

[9] A ''market disruption event'' is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) A trading disruption, if material, at any time during the one hour period that ends at the close of trading for the applicable exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for the applicable exchange; or (iii) an early closure. A ''trading disruption'' generally means any suspension of, or limitation, imposed on trading by the primary exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise: (i) Relating to securities that comprise 20% or more of the level of the S&P 500® Index (the ''S&P 500''); or (ii) in options contracts or futures contracts relating to the Index or the S&P 500 on any relevant related exchange. An ''exchange disruption'' means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to: (i) Effect transactions in, or obtain market values on, any primary exchange or related exchange in securities that comprise 20 percent or more of the level of the S&P 500; or (ii) effect transactions in options contracts or futures contracts relating to the Index or the S&P 500 on any relevant related exchange. A ''related exchange'' is an exchange or quotation system on which futures or options contracts relating to the Index or the S&P 500 are traded.

[10] Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division, Commission, on October 31, 2007.

[11] *See* Securities Exchange Act Release Nos. 51426 (March 23, 2005), 70 FR 16315 (March 30, 2005) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 50719 (November 22, 2004), 69 FR 69644 (November 30, 2004) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 51634 (April 29, 2005), 70 FR 24138 (May 6, 2006) (approving the listing and trading of Wachovia notes linked to the BXM Index); and 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (approving the listing and trading of JPMorgan notes linked to the BXD Index). The BXM index is the CBOE S&P 500 BuyWrite Index℠ while the BXD is the equivalent index using the DJIA as the underlying index rather than the S&P 500.

[12] Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division, Commission, on October 31, 2007.

[13] The BXM Index is a benchmark index designed to measure the performance of a hypothetical ''buy-write'' strategy on the S&P 500. A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

that passively follows the CBOE S&P 500 PUT strategy. The portfolio is managed and calculated as follows:

- On June 1, 1988, the inception date, SPX at-the-money put options are sold and $100 plus the cash from this sale is invested at the three-month Treasury bill rate.[14] If the puts expire in the money at the next roll date, the final settlement loss is financed by the Treasury bills, and a new batch of puts is sold. The revenue from the sale of the puts is invested at the one-month Treasury bill rate.
- Similarly, on the second roll date, any settlement loss from expiring puts is financed first by one-month Treasury bills and if this is not sufficient, by three-month Treasury bills. Again, the cash from the sale of new puts is invested at the one-month Treasury bill rate.
- On the third roll date, both the one- and three-month Treasury investments are liquidated and the cash is used to finance possible losses from the expiring puts. New puts are sold and the total net cash balance is now reinvested at the three-month Treasury bill rate.

Final Settlement Price of Expiring Put Options

At expiration, the put options are settled to a Special Opening Quotation (SOQ, ticker ''SET'') of the S&P 500.[15] The SOQ is a special calculation of the S&P 500 Index compiled from the opening prices of S&P 500 stocks. The SOQ is calculated when all S&P 500 stocks have opened for trading; this typically happens before 11 a.m. Eastern Time (''ET'').[16] The aggregate settlement value of the expiring puts is equal to the number of puts times the maximum of 0 and the difference between the strike price of the puts and the SOQ.

Selection of the ''At-the-Money'' Strike Price

The strike price of the new options is the strike price of the listed CBOE SPX put option that is closest to but not greater than the last value of the S&P 500 Index reported before 11 a.m. ET. For example, if the last S&P 500 Index value reported before 11 a.m. ET is 1433.10 and the closest listed SPX put option strike price below 1433.10 is 1430 then 1430 strike SPX put options are sold.

Sale Price of Put Options[17]

The new put options are deemed sold at a price equal to the volume-weighted average of the traded prices (''VWAP'') of put options with that strike during the half-hour period beginning at 11:30 a.m. ET. The CBOE calculates the VWAP in a two-step process. First, the CBOE excludes trades between 11:30 a.m. and 12 p.m. ET that are identified as having been executed as part of a ''spread.'' Second, the CBOE then calculates the weighted average of all remaining transaction prices at that strike between 11:30 a.m. and 12 p.m. ET, with weights equal to the fraction of total non-spread volume transacted at each price during this period. The source of the transaction prices used in the calculation of the VWAP is CBOE's Market Data Retrieval (''MDR'') System.[18] If no transactions occur at the new put strike between 11:30 a.m. and 12 p.m. ET, the new put options are deemed sold at the last bid price reported before 12 p.m. ET.

Number of Puts Sold

The PUT investor sells a different number of puts at every roll. The number of puts is chosen to ensure that the maximum final settlement loss can be financed by Treasury bills. Therefore, if the S&P 500 falls to zero, the value of the PUT portfolio is zero. The number of puts sold increases with Treasury bill rates and the price of the put and will decrease with the strike price.

Index Calculation

CBOE calculates the PUT once per day at the close of trading. On any given date, the index represents the value of the initial $100 invested in the CBOE S&P 500 PUT strategy.

At the close of every business date, the value of the PUT is equal to the value of the Treasury bill account less the mark-to-market value of the puts:

$$PUT_t = M_t - N_{last} P_t$$

where M_t is the Treasury bill balance at the close of date t, N_{last} is the number of put options sold at the last roll date, and P_t is the arithmetic average of the last bid and ask prices of the put option reported before 4 p.m. ET on date t.

On all but roll dates, the Treasury bill balance is obtained by compounding the one and three-month Treasury balances at the previous business close at their respective daily rates.

$$M_t^i = \left(1 + r_{t-1}^i\right) M_{t-1}^i$$

where i = 1 and 3 for one and three-month Treasury bills, and r^i_{t-1} is the corresponding Treasury bill rate from the previous to the current close. The Treasury bill rates between two roll dates are obtained by compounding the daily rates.

On every third roll date, the Treasury bills are deemed to mature, the cash is used to pay for final settlement of the puts if they expire in-the-money, and new puts are sold. The net cash balance available for reinvestment is:

$$M_t = \sum_i \left(1 + r_{t-1}^i\right) M_{t-1}^i - N_{last} \mathrm{Max}\left[0, K_{old} - SOQ_t\right] + N_{new} P_{vwap}$$

where K_{old} is the strike price of the put options sold at the previous roll date, SOQ_t is the final settlement price on roll date t, N_{new} is the number of new puts sold and P_{vwap} is the volume-weighted average price at which the new options are sold. This balance is reinvested at the three-month Treasury bill rate. Therefore, in the month following a third roll date, the one-month Treasury balance is zero.

The number of new puts sold on any roll date t is set such that the Treasury balance at the next roll date covers the maximum put settlement loss:

$$N_{new} = M_t / \left(K_{new} / \left(1 + R_t\right) - P_{vwap}\right)$$

where K_{new} is the strike price at which the new puts are sold, and R_t is the three-month Treasury bill rate to the next roll date.

[14] The intra-day cash from selling puts at the open is deemed to be invested at the close of the roll date. Similarly settlement losses are deemed to be financed at the close.

[15] If the third Friday is an exchange holiday, the put option will be settled against the SOQ on the previous business day and the new put option will be selected on that day as well.

[16] If one or more stocks in the S&P 500 Index do not open on the day the SOQ is calculated, the final settlement price for SPX options is determined in accordance with the Rules and By-Laws of the Options Clearing Corporation.

[17] A slightly different roll procedure is used to calculate the historical series of the CBOE S&P 500 Collateralized Put Index. This is to take into account the changes in the timing of the expiration of S&P 500 options, and to mimic the changes made in the calculation of the BXM series over time. Up to November 20, 1992, the roll is deemed to take place at the close of the 3rd Friday, the strike price of the new put is determined at 4 p.m. ET and the new puts are deemed sold at the last bid price before 4 p.m. ET. After this date, the index is rolled at 11 a.m. ET instead. And starting on March 17, 2006, the new puts were sold at the VWAP.

[18] Time & Sales information from CBOE's MDR System is disseminated through the Options Price Reporting Authority (OPRA) and is publicly available through most price quote vendors.

		Treasury balance		Number of puts	Strike price	SOQ	Settlement loss	Put bid	
		1 Month	3 Months						
11/20/03		22.0826	647.6421	0.6440	1040				
11/21/03	Pre-settlement	22.0832	647.6589			1038	1.1978		
	Post-Settlement	20.8854	647.6589	0.6612	1030			18.2	1.00071

November 21, 2003 was a third roll date. Daily compounding of the one-month and three-months Treasury balances outstanding at the close of November 20, 2003 (daily compounding rates 1.000024 and 1.00003, respectively) yielded one- and three-month settlement balances of $22.08 and $647.66. Since the SOQ was 1038, the 1040 put expired in the money with a settlement loss of $1.1978 = .644* (1040–1038). The number of new puts sold was N = M / [K/(1+R) − P] = 668.5442/(1030/1.000717–18.2) = .6612. Equivalently, N*K = (M+N*P)*(1+R) = .6612*1030.

Assuming that the S&P 500 had decreased to 0 at the next roll date (December 19, 2003), the settlement loss on the puts would have been N*K= .6612 * 1030. By construction, this would have been exactly covered by the Treasury investment. The calculation on other roll dates is similar to that on third roll dates but the cash from sale of the puts is invested at the one-month Treasury bill rate.

The daily closing price of the PUT Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day.[19] The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. The Exchange believes that the dissemination of the S&P 500 along with the ability of investors to obtain S&P 500 put option pricing provides sufficient transparency regarding the PUT Index. In addition, as indicated above, the value of the PUT Index is calculated once every scheduled trading day, thereby, providing investors with a daily value of such ''hypothetical'' put selling options strategy on the S&P 500.

The CBOE has represented that the PUT Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. The daily change in the PUT Index reflects the daily changes in the Treasury bill account and related put options positions. Eksportfinans represents that it will seek to arrange to have the PUT Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.[20] If, however, Eksportfinans is unable to arrange the calculation and dissemination of the PUT Index as indicated above, the Exchange will undertake to delist the Notes.[21]

In order to provide an updated value of the daily Redemption Amount for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative Redemption Amount (the ''Indicative Value''). The Indicative Value will be calculated by the Exchange after the close of trading and after the CBOE calculates the PUT Index for use by investors the next scheduled trading day. Indicative Value is not adjusted on an intra-day basis.[22] It is designed to provide investors with a daily reference value of the Index. The Indicative Value may not reflect the precise value of the current Redemption Amount or amount payable upon exchange or maturity. Therefore, the Indicative Value disseminated by the Exchange during trading hours should not be viewed as a real time update of the PUT Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current PUT Index value, the values of the Indicative Value and the PUT Index will diverge due to the application of the Index Fee.

Because the PUT Index is not calculated and disseminated every 15 seconds, the Exchange seeks a limited exception from the generic continued listing requirement set forth in Section 107D(h) of the Company Guide. In current Commentary .01 to Section 107, the Exchange provides that although the BXM and BXD Indexes do not satisfy the requirements of Section 107D(h), these Indexes nevertheless may be listed and traded pursuant to the generic standards set forth in Section 107D. The Exchange believes that the dissemination requirement found in Section 107D(h) of the Company Guide is not necessary for the PUT Index because the dissemination of the S&P 500 along with the ability of investors to obtain put option pricing information provides sufficient transparency regarding the Index. Accordingly, the Exchange requests that the Commission approve the proposed revision to Commentary .01 to Section 107D.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[23]

Because the Notes are issued in $20 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[24] Second, the Notes will be subject to the equity margin rules of the Exchange.[25] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer; and (2) to

[19] The Commission, in connection with BXM and BXD Index Notes, approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. *See supra* note 11.

[20] The Exchange represents, that it will file a proposed rule change pursuant to Rule 19b–4, seeking approval to continue trading the Notes based on a successor or substitute index, and unless approved, the Exchange will commence delisting of the Notes. Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division, Commission, on October 31, 2007.

[21] *See supra* note 4.

[22] The Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex and Ronesha Butler, Special Counsel, Division, Commission, on October 31, 2007.

[23] 17 CFR 240.10A–3.

[24] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[25] *See* Amex Rule 462 and Section 107D(k) of the Company Guide.

have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Eksportfinans will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities and options. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objective of Section 6(b)(5) of the Act,[27] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[26] 15 U.S.C.78f(b).

[27] 15 U.S.C. 78f(b)(5).

The Amex has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–94 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Amex–2007–94 and should be submitted on or before December 21, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23640 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56862; File No. SR–CBOE–2007–135]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Transaction Fee Waiver for Options on the Mini-SPX

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive all transaction fees in options on the Mini-SPX (''XSP''). The text of the proposed rule change is available at the CBOE, on the Exchange's Web site at *http://www.cboe.org/legal*, and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to waive transaction fees for all market participants in XSP options beginning on November 19, 2007.

CBOE intends to undertake a marketing ''re-launch'' of the XSP product due in part to the fact that XSP options are now traded in penny increments in conjunction with the expanded penny pilot program recently approved by the Commission.[3] In conjunction with the re-launch, CBOE has decided to waive all XSP transaction fees for an indefinite period of time. The Exchange may determine to reevaluate the fee waiver at a future time.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–135 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23590 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities and Exchange Act Release No. 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56860; File No. SR–CBOE–2007–59]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend the Minimum Quote Size Requirements for Hybrid Opening System Rotations

November 29, 2007.

On September 17, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its minimum quote size requirements that are applicable to trading rotations conducted via the Hybrid Opening System (''HOSS''). The proposed rule change was published for comment in the **Federal Register** on October 25, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Currently, CBOE Rule 8.7 generally requires that the initial size a market maker electronically quotes must be at least ten contracts (undecremented size) (the ''10-up'' requirement).[4] The Exchange proposes to amend CBOE Rule 6.2B to modify the minimum quote size requirements applicable to Market-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56680 (October 19, 2007), 72 FR 60697 (''Notice'').

[4] If, however, the underlying primary market disseminates a 100-share best bid or offer quote (which is the equivalent of one option contract), a Market-Maker's undecremented quote may be for as low as one contract (''1-up'') if the process is automated and the quote automatically returns to at least 10-up when the underlying market no longer disseminates a 100-share quote. *See, e.g.*, CBOE Rule 8.7(d)(ii)(B).

Makers, Remote Market-Makers, Designated Primary Market-Makers, Electronic Designated Primary Market-Makers and Lead Market-Makers (collectively referred to as ''Market-Makers'')[5] with respect to opening rotations in CBOE Hybrid Trading System (''Hybrid'') classes. Specifically, the 10-up requirement would continue to apply, except that a Market-Maker would be permitted to enter an opening quote for as low as one contract if the underlying primary market[6] disseminates less than a 1000-share best bid or offer quote (which is the equivalent of ten contracts) immediately prior to an option series opening. In contrast to the intra-day quoting requirements under CBOE Rule 8.7, this exception would not require that the opening quote process be automated or that the Market-Maker's quote size automatically return to at least 10-up when the underlying primary market no longer disseminates a minimum 1000-share quote.

The Commission notes that, while the Exchange believes that the existing opening quote size requirement imposes a reasonable obligation on Market-Makers who receive certain benefits for satisfying this and other obligations, the Exchange also believes that there are instances where requiring Market-Makers to quote 10-up during an opening rotation imposes a heightened level of risk on them.[7] Accordingly, CBOE's proposal would provide limited relief from this quoting requirement during the opening rotation only.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that a national securities exchange's rules be designed to facilitate transactions in securities, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission notes that Market-Makers hedge their options transactions by buying and/or selling the underlying securities. When the underlying primary market for the particular equity security on which a CBOE option is based disseminates less than a 1000-share quote during CBOE's opening rotation in the respective option series, the amount of readily-accessible liquidity available to a CBOE Market-Maker in the underlying security on that particular side of the market to hedge a 10-up quote in the respective option may potentially be limited. Correspondingly, Market-Makers' ability to hedge their positions at the open might be restricted, increasing their financial exposure and risk, particularly when the Market-Maker is required to quote over multiple series during the typically active open rotation period.[11]

While the Commission continues to believe that CBOE's existing quote size requirements are appropriate, given the benefits that are provided to Market-Makers such as favorable margin treatment, the Commission also believes that it is reasonable to allow a limited exception for Market-Makers to lower their quote sizes to as low as one contract during opening rotations on HOSS when there is a diminished amount of liquidity in the underlying primary market. By permitting Market-Makers to limit their exposure at the opening, the Commission believes that this proposal may encourage Market-Makers to quote more competitively during HOSS opening rotations.[12] The Commission notes that CBOE's proposal would permit Market-Makers to submit an opening quote for as low as one contract only in connection with opening rotations on HOSS, though a Market-Maker would be free to quote more if it so choose. Further, the proposal would permit a Market-Maker to maintain its 1-up quote during the opening rotation until it is decremented or the Market-Maker updates its quote, at which point CBOE's continuous quoting obligation rules would apply. Finally, the Commission believes that the proposal should not detract from CBOE's ability to maintain fair and orderly openings on HOSS because, to the extent that there may be a market order imbalance on the opening, such imbalances would continue to be addressed in the same manner as they are currently handled under existing CBOE rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2007–59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23608 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[5] Currently, Designated Primary Market-Makers, Electronic Designated Primary Market-Makers and Lead Market-Makers are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; other Market-Makers and Remote Market-Makers are permitted, but not required, to enter opening quotes in accordance with CBOE Rule 6.2B. *See* CBOE Rules 6.2B, 8.15A (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, and 8.93.

[6] CBOE Rule 1.1(v) defines the term ''primary market'' of an underlying security as ''the principal market in which the underlying security is traded.''

[7] *See* Notice, *supra* note 3, at 60698.

[8] 15 U.S.C. 78(f)(b).

[9] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] According to the Exchange, an options exchange may list 20 or more options series for an underlying stock. For example, if a Market-Maker posts 10-up markets in twenty series, that Market-Maker would provide liquidity equivalent to 20,000 shares.

[12] Nothing in this proposal would affect a Market-Maker's obligation to honor its firm quote obligations imposed by CBOE Rule 8.51.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56863; File No. SR–DTC–2007–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Hearing Procedures Afforded to an Interested Person and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks (1) to modify DTC's rules regarding hearing procedures afforded to Interested Persons[3] and (2) where practicable or beneficial, to harmonize them with similar rules of DTC's affiliates, the National Securities Clearing Corporation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''A Participant or Pledgee, [or] applicant to become a Participant or Pledgee or issuer of a Security.'' Rule 22, Section 1.

(''NSCC'') and the Fixed Income Clearing Corporation (''FICC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d–1(c) under the Act[5] that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.[6]

Currently under DTC's rules, an Interested Person subject to disciplinary action has a right to a hearing before a member or members of a panel selected by the Chairman of the Board from a pool of persons employed by or partners of participants. Because some rule violations are not sufficiently serious to merit Board review, DTC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d–1(c)(2) of the Act for those rule violations DTC deems minor. Consistent with Rule 19d–1(c)(2) of the Act, DTC would designate those rule violations for which a fine may be assessed in an amount not to exceed $5,000 as minor rule violations. If a member were to dispute a fine imposed by DTC by filing a written request for hearing and a written statement, DTC management would have the authority to waive the fine. DTC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by DTC management. If DTC management were not to waive the fine, the member could appeal the decision to a panel comprised of DTC officers (''Minor Rule Violation Panel'').

2. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of a DTC rule or procedure for which a fine in an amount of over $5,000 is assessed, (ii) applicants for participation, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation Panel decision adverse to an Interested Person, the Interested Person would be entitled to a hearing before a panel comprised of three individuals selected by the Chairman of the Board from a pool of persons employed by or partners of participants. Persons shall be appointed members of the pool by the Board. Decisions of the panel would be final; however, the full Board of Directors would retain the right to modify any sanction or reverse any decision of the Board panel that is adverse to the Interested Person.

Currently with respect to hearings, an Interested Person is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the Board panel, the associated cost may be charged in whole or part to the Interested Person in the event that the decision is adverse to the Interested Person. The Interested Person is advised of the Board panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

3. Administrative Changes: Uniformity of Time Frames

The proposed rule changes seek to implement uniform time periods among DTC, NSCC, and FICC governing actions an Interested Person would be required to take in order to request a hearing. The deadlines an Interested Person must adhere to in order to request a hearing currently vary between DTC, NSCC, and FICC. Under the proposed rule change, an Interested Person would have five business days from the date on which DTC first informed it of a sanction or a denial of membership by which to request a hearing.

Within seven business days, or three days in the case of a summary action taken against the Interested Person, after filing a request for a hearing with DTC, the Interested Person would be required to submit to DTC a clear and concise written statement setting forth the action or proposed action of DTC with respect to which the hearing is requested, the basis for objection to such action, whether the Interested Person intends to attend the hearing, and whether the Interested Person chooses to be represented by counsel at the hearing. The proposed time frames would be consistent with time frames being proposed by FICC and NSCC.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because the adoption of a Minor Rule Violation Plan furthers the statutory objective of providing a fair procedure for disciplining Participants and will provide DTC with the ability to impose a meaningful sanction for those rule violations that do not necessarily rise to a level of meriting a full disciplinary proceeding. Accordingly, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] 17 CFR 240.19d–1(c).

[6] Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7–983A].

[7] 15 U.S.C. 78q–1.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2007–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2007–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007–06.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2007–06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23591 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56864; File No. SR–FICC–2007–06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on July 24, 2007, amended[3] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks (1) to modify the rules of FICC's Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') (GSD and MBSD are collectively referred to as the ''Divisions''), including the EPN rules of MBSD, regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, to harmonize them with similar rules of FICC's affiliates, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d–1(c) under the Act[5] that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.[6]

Currently under each Division's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of FICC's Board of Directors regardless of the severity of the action for which the member or applicant is being disciplined.[7] Because some rule violations are not sufficiently serious to merit Board review, FICC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d–1(c)(2) of the Act for those rule violations FICC deems minor. Consistent with Rule 19d–1(c)(2) of the Act, FICC would designate those rule violations for which a fine may be assessed in an amount not to exceed $5,000 as minor rule violations. If a member were to dispute a fine imposed by FICC by filing a written request for hearing and a written statement, FICC management would have the authority to waive the fine. FICC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by FICC management. If FICC management were not to waive the fine, the member could appeal the decision to a panel comprised of FICC officers (''Minor Rule Violation Panel'').

2. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of a GSD or MBSD rule for which a fine in an amount of over $5,000 is assessed, (ii) applicants for membership, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment corrected a typographical error in the proposed rule text.

[4] The Commission has modified the text of the summaries prepared by FICC.

[5] 17 CFR 240.19d–1(c).

[6] Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) File No. S7–983A].

[7] MBSD Article V, Rule 7 (''Appeals''); EPN Article X, Rule 7 (''Appeals''); and GSD Rule 37 (''Hearing Procedures'').

Panel decision adverse to a member or applicant, the member or applicant would be entitled to a hearing before a panel comprised of three individuals of the FICC Board of Directors (or their designees) appointed by the Chairman of the FICC Board. Decisions of the panel would be final; however, the full Board of Directors would retain the right to modify any sanction or reverse any decision of the Board panel that was adverse to the member or applicant.

Currently with respect to hearings, a member or applicant is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the Board panel, the associated cost may be charged in whole or part to the member or applicant in the event that the decision is adverse to the member or applicant. The member or applicant is advised of the Board panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

3. Administrative Changes: Uniformity of Time Frames

The proposed rule changes seek to implement uniform time periods for the Divisions governing actions a member or applicant would be required to take in order to request a hearing. The deadlines a member or applicant must adhere to in order to request a hearing currently vary between the Divisions. Under the proposed rule change, a member or applicant would have five business days, or two business days in the case of a summary action taken against the member or applicant pursuant to Rule 21 or 22,[8] from the date on which FICC first informs it of a sanction or a denial of membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action taken against the member or applicant, after filing a request for a hearing with FICC, the member or applicant would be required to submit to FICC a clear and concise written statement setting forth the action or proposed action of FICC with respect to which the hearing is requested, the basis for objection to such action, whether the member or applicant intends to attend the hearing, and whether the member or applicant chooses to be represented by counsel at the hearing. These proposed time frames would be consistent with time frames being proposed by DTC and NSCC.

4. Technical Changes

MBSD Article V, Rule 3 (''Fines and Other Sanctions'') would be amended in accordance with the proposed changes to the hearing procedures of MBSD.

In addition, minor technical changes would be made to the rules of both Divisions where necessary to implement the proposed changes set forth above.

5. Implementation of the Proposed Changes

The proposed changes will be implemented upon approval of this proposed filing by the Commission. Members will be advised of the implementation through an FICC Important Notice.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder because the adoption of a Minor Rule Violation Plan furthers the statutory objective of providing a fair procedure for disciplining members and will provide FICC with the ability to impose meaningful sanctions for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding. Accordingly, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2007–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2007–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007–06.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–

[8] Examples of a summary action are a suspension of a member or restriction of a member's access to services as described in Rule 21, Section 1 (''Restrictions on Access to Services'').

[9] 15 U.S.C. 78q–1.

2007–06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23592 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56871; File No. SR–ISE–2007–87]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Criteria for Securities That Underlie Options Traded on the Exchange

November 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (''Index Multiple ETFs'') and Index Inverse Exchange Traded Fund Shares (''Index Inverse ETFs''). The text of the proposed rule change is available at (*http://www.ise.com*), at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rules 502 and 503 to enable the listing and trading on the Exchange of options on Index Multiple ETFs and Index Inverse ETFs. Index Multiple ETFs seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Index Inverse ETFs seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple ETFs and Index Inverse ETFs differ from traditional exchange-traded funds (''ETFs'') in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trades on the American Stock Exchange (''Amex''), is an example of an Index Multiple ETF. Amex also currently lists for trading Index Inverse ETFs, namely the Short Funds and the UltraShort Funds.[3]

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs may hold a combination of financial instruments, including, among other things, stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). The underlying portfolios of Index Multiple ETFs generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Index Inverse ETFs will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments'').

Currently, ISE Rule 502(h) provides securities deemed appropriate for options trading shall include shares or other securities (''Fund Shares'')[4] that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are traded on a national securities exchange or through the facilities of a national securities association and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities); or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust (''Funds''); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of the Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of the UltraShort Funds). The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (−200%) of the underlying benchmark index.

[4] ISE also proposes to make technical conforming changes to its current ISE Rules 502(h) and 503(h) to those of the Amex. As a result, and in the context of this filing, the Exchange refers to Fund Shares as Exchange-Traded Fund Shares hereafter.

or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'').

The Exchange proposes to amend ISE Rule 502(h) to expand the type of options to include the listing and trading of options based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Index Multiple ETFs and Index Inverse ETFs will continue to otherwise satisfy the listing standards in ISE Rule 502(h). The Exchange also proposes to make non-substantive, clarifying changes to its Rule 502(h) by conforming the construction of this rule to that of the Amex. The Exchange notes that this change is purely aesthetic and does not make any substantive changes to the listing standards found in ISE Rule 502(h). Accordingly, in addition to certain repositioning of existing rule text, the Exchange also proposes to (1) remove the reference to a ''national securities association'' in ISE Rule 502(h)(i), and (2) add the words ''or currencies'' to ISE Rule 502(h)(ii).

As set forth in proposed amended ISE Rule 502(h), Index Multiple ETFs and Index Inverse ETFs must be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. In addition, Index Multiple ETFs and Index Inverse ETFs must meet either: (i) The criteria and guidelines under ISE Rules 502(a) and 502(b); or (ii) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Exchange-Traded Fund Shares fund, all as described in the prospectus.

The Exchange's current continued listing standards for options on Fund Shares will continue to apply.

The Exchange proposes to amend ISE Rule 503(h) to indicate that the index or portfolio may consist of, among other things, securities, Financial Instruments and/or Money Market Instruments. In proposing to make conforming changes to the Exchange's rules to those of the Amex, ISE seeks to amend ISE Rule 503(h) by (1) deleting a reference to ''national securities association'' and (2) adding the words ''or suspended''.

Under the applicable continued listing criteria in ISE Rule 503(h), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities, and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Exchange-Traded Fund Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Index Multiple ETFs or Index Inverse ETFs, if the underlying ETFs are halted or suspended from trading on their primary market or if the underlying ETFs are delisted in accordance with the terms of ISE Rule 503(h) or the value of the index or portfolio on which the underlying ETFs are based is no longer calculated or available.

The expansion of the types of investments that may be held by Index Multiple ETFs or Index Inverse ETFs under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits [5] or margin.[6]

This proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.[7] ISE believes the ability to trade options on Index Multiple ETFs and Index Inverse ETFs will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on Fund Shares is necessary to ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple ETFs or Index Inverse ETFs that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple ETF options and Index Inverse ETF options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2007–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[5] *See* ISE Rules 412 and 414.

[6] *See* ISE Rule 1202.

[7] *See supra,* note 3.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2007–87 and should be submitted on or before December 27, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Surveillance

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in options on Index Multiple ETFs and Index Inverse ETFs. In addition, the Exchange has represented that the expansion of the types of investments that may be held by Index Multiple ETFs or Index Inverse ETFs under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits [13] or margin.[14]

Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing listing standards for options on Exchange-Traded Fund Shares will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended ISE Rule 502(h), would require that Index Multiple ETFs and Index Inverse ETFs be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. [15]

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust. The Commission believes that the ability to trade options on the Index Multiple ETFs and Index Inverse ETFs will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange's listing criteria for options on Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple ETFs and Index Inverse ETFs that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved substantially similar proposals by other national securities exchanges.[16] This proposed rule change does not raise any new, unique, or substantive issues that differ substantially from those raised in the prior filings that would preclude the trading of the options on Index Multiple ETFs or Index Inverse ETFs on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without delay, additional competition in the market for these types of options.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, (SR–ISE–2007–87), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23586 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* ISE Rules 412 and 414.

[14] *See* ISE Rule 1202.

[15] 17 CFR 242.600(b)(47).

[16] *See* Securities Exchange Act Release Nos. 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (approving SR–Amex–2007–35) and 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (approving SR–CBOE–2007–119 on an accelerated basis).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56866; File No. SR–ISE–2007–102]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Permit Trading of Shares of 93 Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 29, 2007, ISE filed Amendment No. 1 to the proposed rule change.[3] This order provides notice of the proposed rule change and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade shares (''Shares'') of the 93 funds identified below (collectively, ''Funds'') of the ProShares Trust pursuant to unlisted trading privileges (''UTP'').

The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to trade pursuant to UTP the Shares of the 93 Funds, which are exchange-traded funds (''ETFs''). The Commission has previously approved the listing and trading of those ETFs on the American Stock Exchange LLC (''Amex''). The Exchange is submitting this filing because its current generic listing standards for ETFs do not extend to ETFs where the investment objective corresponds to a specified multiple of the performance, or the inverse performance, of an index that underlies a Fund (each such index is referred to below as an ''Underlying Index''), rather than merely mirroring the performance of the index. These Shares are currently trading on Amex, NYSE Arca, and Nasdaq. The Funds are referred to as Ultra Funds, Short Funds, and UltraShort Funds, as described more fully below.

Ultra Funds

Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes (''Ultra Funds''). If such a Fund meets its objective, the net asset value (''NAV'')[4] of the Shares of the Fund should increase (on a percentage basis) approximately twice as much as the Fund's Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day. This filing applies to the following Ultra Funds:

- Four Ultra Funds, the listing and trading of which on Amex were approved by the Commission on May 10, 2006:[5] (1) Ultra S&P 500, (2) Ultra Nasdaq–100, (3) Ultra Dow 30, and (4) Ultra S&P Mid-Cap 400; and
- 27 Ultra Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:[6] (1) Ultra Russell 2000, (2) Ultra S&P SmallCap 600, (3) Ultra S&P500/Citigroup Value, (4) Ultra S&P500/Citigroup Growth, (5) Ultra S&P MidCap 400/Citigroup Value, (6) Ultra S&P MidCap 400/Citigroup Growth, (7) Ultra S&P SmallCap 600/Citigroup Value, (8) Ultra S&P SmallCap 600/Citigroup Growth, (9) Ultra Basic Materials, (10) Ultra Consumer Goods, (11) Ultra Consumer Services, (12) Ultra Financials, (13) Ultra Health Care, (14) Ultra Industrials, (15) Ultra Oil & Gas, (16) Ultra Real Estate, (17) Ultra Semiconductors, (18) Ultra Technology, (19) Ultra Utilities, (20) Ultra Russell Midcap Index, (21) Ultra Russell Midcap Growth Index, (22) Ultra Russell Midcap Value Index, (23) Ultra Russell 1000 Index, (24) Ultra Russell 1000 Growth Index, (25) Ultra Russell 1000 Value Index, (26) Ultra Russell 2000 Growth Index, and (27) Ultra Russell 2000 Value Index.

Short Funds

ISE also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes (''Short Funds''). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when prices in the Index rise on a given day. This filing applies to the following Short Funds:

- Four Short Funds, the listing and trading of which on Amex were approved by the Commission on May 10, 2006:[7] (1) Short S&P 500, (2) Short Nasdaq–100, (3) Short Dow 30, and (4) Short S&P Mid-Cap 400; and
- 27 Short Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:[8] (1) Short Russell 2000, (2) Short S&P SmallCap 600, (3) Short S&P500/Citigroup Value, (4) Short S&P500/Citigroup Growth, (5) Short S&P MidCap 400/Citigroup Value, (6) Short S&P MidCap 400/Citigroup Growth, (7) Short S&P SmallCap 600/Citigroup Value, (8) Short S&P SmallCap 600/Citigroup Growth, (9) Short Basic Materials, (10) Short Consumer Goods, (11) Short Consumer Services, (12) Short Financials, (13) Short Health Care, (14) Short Industrials, (15) Short Oil & Gas, (16) Short Real Estate, (17) Short Semiconductors, (18) Short Technology, (19) Short Utilities, (20) Short Russell Midcap Index, (21) Short Russell Midcap Growth Index, (22) Short Russell Midcap Value Index, (23) Short Russell 1000 Index, (24) Short Russell 1000 Growth Index, (25) Short Russell 1000 Value Index, (26) Short Russell 2000 Growth Index, and (27) Short Russell 2000 Value Index.

UltraShort Funds

ISE also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes (''UltraShort Funds''). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately twice as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when such prices rise on a given day. This

[4] NAV per Share of each Fund is computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

[5] *See* Securities Exchange Act Release No. 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41). The Commission approved the UTP trading of these Funds on NYSE Arca and Nasdaq. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115); Securities Exchange Act Release No. 55353 (February 26, 2007), 72 FR 9802 (March 5, 2007) (SR–Nasdaq–2007–011).

[6] *See* Securities Exchange Act Release No. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101). Subsequently, the Commission approved the UTP trading of these Funds on NYSE Arca. *See* Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2007–87) (SR–NYSEArca–2006–87).

[7] *See supra* note 4.

[8] *See supra* note 5.

filing applies to the following UltraShort Funds:

• Four UltraShort Funds, the listing and trading of which on Amex were approved by the Commission on June 23, 2006:[9] (1) UltraShort S&P 500, (2) UltraShort Nasdaq–100, (3) UltraShort Dow 30, and (4) UltraShort S&P MidCap 400; and

• 27 UltraShort Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:[10] (1) UltraShort Russell 2000, (2) UltraShort S&P SmallCap 600, (3) UltraShort S&P500/Citigroup Value, (4) UltraShort S&P500/Citigroup Growth, (5) UltraShort S&P MidCap 400/Citigroup Value, (6) UltraShort S&P MidCap 400/Citigroup Growth, (7) UltraShort S&P SmallCap 600/Citigroup Value, (8) UltraShort S&P SmallCap 600/Citigroup Growth, (9) UltraShort Basic Materials, (10) UltraShort Consumer Goods, (11) UltraShort Consumer Services, (12) UltraShort Financials, (13) UltraShort Health Care, (14) UltraShort Industrials, (15) UltraShort Oil & Gas, (16) UltraShort Real Estate, (17) UltraShort Semiconductors, (18) UltraShort Technology, (19) UltraShort Utilities, (20) UltraShort Russell Midcap Index, (21) UltraShort Russell Midcap Growth Index, (22) UltraShort Russell Midcap Value Index, (23) UltraShort Russell 1000 Index, (24) UltraShort Russell 1000 Growth Index, (25) UltraShort Russell 1000 Value Index, (26) UltraShort Russell 2000 Growth Index, and (27) UltraShort Russell 2000 Value Index.

Access to the current portfolio composition of each Fund is currently available through the Trust's Web site (*http://www.proshares.com*).[11] The Underlying Indexes are identified in the filings in which Amex proposed to list and trade the Funds (the ''Original Filings'').[12] The Original Filings state that Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (''IIV''), quotations for and last-sale information concerning the Shares, the recent NAV, the number of shares outstanding, and the estimated cash amount and total cash amount per Creation Unit. Amex will make available on its Web site the daily trading volume, closing price, NAV, and final dividend amounts, if any, to be paid for each Fund. The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4 p.m. Eastern Time (''ET''). The NAV would be calculated and disseminated at the same time to all market participants.[13]

The Original Filings state that the daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various Web sites such as *http://www.bloomberg.com*. The Original Filings further state that data regarding each Underlying Index is also available from the respective index provider to subscribers. According to the Original Filings, several independent data vendors package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

The Original Filings state that the value of each Underlying Index is updated intra-day on a real-time basis as its individual component securities change in price, and the intra-day values of each Underlying Index are disseminated at least every 15 seconds throughout Amex's trading day by Amex or another organization authorized by the relevant Underlying Index provider.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex disseminates through the facilities of the CTA: (1) Continuously throughout Amex's trading day, the market value of a Share; and (2) at least every 15 seconds throughout Amex's trading day, the IIV as calculated by Amex.

Shares would trade on ISE from 9:30 a.m. ET until 4:15 p.m. ET. ISE would halt trading in the Shares of a Fund under the conditions specified in ISE Rules 702, 703, and 2123. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of ISE Rule 2123 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the Underlying Index. Additionally, ISE may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of ISE, makes further dealings on ISE detrimental to the maintenance of a fair and orderly market. ISE will also follow any procedures with respect to trading halts as set forth in ISE rules.

The Exchange proposes to amend ISE Rule 2123 to add a subparagraph addressing the suitability responsibilities of Equity Electronic Access Members (''EAMs'') in recommending these Funds to customers. Specifically, proposed Rule 2123(*l*) would require an Equity EAM to have reasonable grounds for believing that the recommendation of any transaction for the purchase, sale, or exchange of any of these Funds is suitable for its customer. An Equity EAM shall base its determination of suitability upon the basis of the information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, tax status, financial situation, and needs, and any other information known by such Equity EAM.

Prior to the commencement of trading, the Exchange will inform Equity EAMs in a Regulatory Information Circular (''RIC'') of the special characteristics and risks associated with trading the Shares. Specifically, the RIC will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) proposed ISE Rule 2132(*l*), which imposes a duty of due diligence on Equity EAMs to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that Equity EAMs deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with a transaction; and (5) trading information.

In addition, the RIC will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The RIC will also discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from the Act and rules under the Act.

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[9] *See supra* note 5.

[10] *See id.*

[11] The Trust's Web site is publicly accessible at no charge and contains the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the current and three immediately preceding calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund would inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

[12] *See supra* notes 4 and 5.

[13] The Original Filings explain that, if the IIV is not disseminated as required, Amex would halt trading in the shares of the Funds. If Amex halts trading for this reason, then ISE would halt trading in the Shares immediately, as set forth in ISE Rule 2123(e).

The RIC will also disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

The Exchange intends to utilize its existing surveillance procedures applicable to equities to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Additionally, the Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[14] The Exchange also has a general policy prohibiting the distribution of material, non-public information by employees.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is found in Section 6(b)(5),[15] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–102 and should be submitted on or before December 27, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, is

[14] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com*.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See supra* notes 5 and 6.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

calculated by Amex and published via the facilities of the CTA on a 15-second delayed basis throughout ISE's trading hours. As mentioned above, the Trust's Web site provides information relating to the value of the Shares such as the prior business day's closing NAV, the reported closing price, and daily trading volume.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. If the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares pursuant to ISE Rule 2123(e).

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange believes that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform EAMs in a Regulatory Information Circular of the special characteristics and risks associated with trading the Shares.

3. ISE would require its members to deliver a prospectus or product description to investors purchasing the Shares prior to or concurrently with a transaction in the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act and that the trading of the Shares pursuant to UTP by NYSE Arca and Nasdaq is consistent with the Act.[22] The Commission presently is not aware of any regulatory issue that should cause it to revisit these findings or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

[22] *See supra* at notes 5 and 6.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–ISE–2007–102) as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23611 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56865; File No. SR–NSCC–2007–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2007, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks (1) to modify NSCC's rules regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, to harmonize them with similar rules of NSCC's affiliates, The Depository Trust Company (''DTC'') and the Fixed Income Clearing Corporation (''FICC'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d–1(c) under the Act[4] that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.[5]

Currently under NSCC's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of NSCC's Credit and Market Risk Management Committee regardless of the severity of the action for which the member or applicant is being disciplined.[6] Because some rule violations are not sufficiently serious to merit Board review, NSCC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d–1(c)(2) of the Act for those rule violations NSCC deems minor. Consistent with Rule 19d–1(c)(2) of the Act, NSCC would designate those rule violations for which a fine may be assessed in an amount not to exceed $5,000 as minor rule violations. If a member were to dispute a fine imposed by NSCC by filing a written request for hearing and a written statement, NSCC management would have the authority to waive the fine. NSCC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] 17 CFR 240.19d–1(c).

[5] Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7–983A].

[6] If the action or proposed action of NSCC as to which the hearing relates has been taken or has been proposed to be taken by the Credit and Market Risk Management Committee, the members of the panel shall be drawn from members of the Executive Committee of NSCC's Board of Directors. *See* Rule 37 (Hearing Procedures), Section 2.

waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by NSCC management. If NSCC management were not to waive the fine, the member could appeal the decision to a panel comprised of NSCC officers (''Minor Rule Violation Panel'').

(2) Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of an NSCC rule for which a fine in an amount of over $5,000 is assessed, (ii) applicants for membership, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation Panel decision adverse to a member or applicant, the member or applicant would be entitled to a hearing before a panel comprised of three individuals of the NSCC Board of Directors (or their designees) appointed by the Chairman of the NSCC Board. Decisions of the panel would be final; however, the full Board of Directors would retain the right to modify any sanction or reverse any decision of the Board panel that was adverse to the member or applicant.

Currently with respect to hearings, a member or applicant is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the Board panel, the associated cost may be charged in whole or part to the member or application in the event that the decision is adverse to the member or applicant. The member or applicant is advised of the Board panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

(3) Administrative Changes: Uniformity of Time Frames

The proposed rule changes seek to implement uniform time periods among NSCC, DTC, and FICC governing actions a member or applicant would be required to take in order to request a hearing. The deadlines a member or applicant must adhere to in order to request a hearing currently vary between NSCC, DTC, and FICC. Under the proposed rule change, a member or applicant would have five business days, or two business days in the case of summary action taken against the member or applicant pursuant to Rule 46,[7] from the date on which NSCC first informs it of a sanction or a denial of membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action being taken against the member or applicant, after filing a request for a hearing with NSCC, the member or applicant would be required to submit to NSCC a clear and concise written statement setting forth the action or proposed action of NSCC with respect to which the hearing is requested, the basis for objection to such action, whether the member or applicant intends to attend the hearing, and whether the member or applicant chooses to be represented by counsel at the hearing. These proposed time frames would be consistent with time frames being proposed by DTC and FICC.

(4) Pending Changes From NSCC Rule Filing SR–NSCC–2006–17

The current time frame for an applicant or member to request a hearing appears in the following rules: Rule 2 (''Members''), Rule 3 (''Lists to Be Maintained''), Rule 51 (''Fund Member''), Rule 54 (''Settling Bank Only Members''), Rule 56 (''Insurance Carrier/Retirement Services Member''), and Rule 60 (''TPA Member'').[8] Each of those rules is pending deletion as part of rule filing SR–NSCC–2006–17. Accordingly, in the event that this filing is approved prior to SR–NSCC–2006–17, the time frame for an applicant or member to request a hearing that appears in those rules will be deleted.

(5) Implementation of the Proposed Changes

The proposed changes would be implemented upon approval of this proposed filing by the Commission. Members would be advised of the implementation through an NSCC Important Notice.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder because the adoption of a Minor Rule Violation Plan furthers the statutory objective of providing a fair procedure for disciplining members and will provide NSCC with the ability to impose meaningful sanctions for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding. Accordingly, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2007–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2007–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[7] Examples of a summary action are a suspension of a member or restriction of a member's access to services as described in Rule 46 (''Restrictions on Access to Services'').

[8] The current time frame for an applicant or member to request a hearing also appears in Rule 45 (''Notices''). This proposed rule filing would delete that reference also.

[9] 15 U.S.C. 78q–1.

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/nscc/2007–06.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2007–06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23594 Filed 12–5–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56851; File No. SR–NYSE–2007–106]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2, Relating to Exchange Rule 103A(a)(3) To Address Changes in the Way the Exchange Delivers Education Programs to its Members and To Clarify That the Mandatory Education Requirement Applies to All Individuals Qualified To Use a Trading License

November 28, 2007.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The NYSE has designated the proposed rule change as one concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. On November 26, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange withdrew Amendment No. 1 on November 27, 2007. The Exchange submitted Amendment No. 2 to the proposed rule change on November 27, 2007.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing to amend Rule 103A(a)(3) to address changes in the way the Exchange delivers education programs to its members and to clarify that the mandatory education requirement applies to all individuals qualified to use a trading license, and not just to members who are active on the trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Rule 103A to reflect certain changes to how the Exchange delivers its continuing education program, and to reflect changes to the Exchange's membership structure, which affects who must complete the program.

Since its inception, the Exchange's Floor Member Continuing Education Program (''FMCE Program''), which NYSE Regulation manages, has evolved from providing semi-annual stand-up presentations to delivering computer-based educational modules in a learning laboratory. Because of limitations associated with these delivery methods, NYSE Regulation is currently upgrading the FMCE Program to permit more efficient and cost-effective delivery to participants via the Internet.

In connection with these changes, the Exchange is proposing to amend Rule 103A(a)(3) to remove the reference to ''semi-annual'' education programs, and is proposing to shorten the time in which program participants must complete the program elements. In addition, due to changes in the NYSE's membership structure, in which one trading license may be used by multiple qualified individuals over the course of a year, the Exchange is proposing to amend Rule 103A(a)(3) to clarify that the education requirement applies to all individuals qualified to use a trading license, not just those who are actively working as ''members'' on the Floor.

Background

NYSE Rule 103A requires the Exchange to provide, and Exchange Floor members to take, continuing education. Over the years, the method by which the Exchange delivered the required education components has evolved from in-person lectures to large groups of members to individualized computer-assisted training in a learning laboratory setting. That evolution reflected an ongoing assessment by the Exchange of the most efficient way to deliver timely continuing education and training to a large group of Floor members.

When the Exchange delivered the FMCE Program in person or in a learning laboratory, participants were required to participate in these meetings during extended business hours. The current language of Rule 103A(a)(3) reflects meeting room and laboratory space limitations by requiring the Exchange to deliver the FMCE Program

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(3).

[5] In Amendment No. 2, the Exchange made a technical change to the rule text.

twice a year and allowing participants 120 days from the time that they were originally scheduled to take continuing education to complete the requirement. To address the space and time limitations associated with the FMCE Program, NYSE Regulation is in the process of modernizing its method for delivering the FMCE Program. As redesigned, NYSE Regulation will offer the FMCE Program via a web-based interactive program that participants can access from an Internet-capable computer. Participants will no longer need to come to a learning laboratory at the Exchange facility or schedule specific times with the Exchange to complete the program. Instead, participants will be able to access the FMCE Program from their member organization offices, under the supervision of their member firm at a time that is mutually convenient for the participant and the member organization. Changes to Rule 103A are necessary in order to keep the rule consistent with the new delivery method.

In addition to the changes necessitated by changes to the program delivery method, the Exchange is also proposing to amend Rule 103A to clarify who is required to complete the FMCE Program. Rule 103A currently applies to all Exchange ''members,'' which, until 2006, referred to individuals who owned or leased seats on the Exchange. In 2006, the Exchange changed its membership structure from seats that were held by particular individuals within a member organization, to trading licenses that are not specific to particular individuals within a member organization.

Under the new membership structure, in order to become a member organization, an incorporated entity must, among other things, purchase a trading license. Holders of a trading license may then designate one or more individuals to use the license, each of whom must complete the qualifications necessary to be ''members'' of the Exchange. Although one license holder may have more than one qualified member associated with it, only one such qualified individual may use the trading license on a given trading day. The individual using the license on a given day is the ''active member'' for that day.

Substituting another qualified individual to use a license can happen on as little as one day's notice to the Exchange. Accordingly, all qualified individuals who could use the license, including those who are not regularly active on the Floor, must remain current with the FMCE Program requirements. As currently drafted, however, Rule 103A, which refers to ''members'' only, does not clearly articulate this requirement.

Proposed Amendments

The Exchange proposes to amend Rule 103A(a)(3) by: (i) Updating the rule to reflect the Exchange's new delivery method; and (ii) clarifying that all individuals qualified to use a trading license must meet the mandatory education requirements under the rule.

First, since the new delivery method will not require Floor members to physically attend Floor member continuing education sessions, the Exchange is proposing to amend Rule 103A(a)(3) by eliminating references to meetings in general.

Second, the Exchange proposes to eliminate the requirement that the Exchange provide continuing member education on a semi-annual basis and instead amend the rule to reflect the versatility of the new delivery method. Going forward, the Exchange intends to annually provide an equivalent amount of education in terms of topics and participation time as it did when the FMCE Program was delivered semi-annually. In the semi-annual mode, the NYSE usually delivered six educational modules, in two sessions of three modules each. This would no longer be the case under the new program; instead, the Exchange plans to deliver education modules on a rolling basis over the course of the year. The Exchange believes that spacing the educational experience gradually over a year's time (an approach that is newly possible with the new delivery method) will be more effective as a learning experience, and enable the Exchange to provide training that is more timely in view of changes to the regulatory landscape.

Third, the Exchange proposes to change the timeframe within which Floor members must complete continuing education. Currently, Rule 103A allows FMCE participants to complete their requirement within 120 days of being scheduled to attend an educational meeting. The 120-day window was predicated on certain physical constraints the Exchange faced in delivering previous versions of the program. Under the old delivery methods, the Exchange had to schedule sufficient original education meetings to accommodate over 1,300 participants. Given the size of available meeting rooms (maximum seating capacity 70 persons) for the in-person delivery method and later the seating capacity of the learning laboratory (maximum of 14 persons) and the additional need to provide make-up sessions for participants who could not attend their originally scheduled meeting, the Exchange needed a relatively large timeframe within which to provide educational opportunities. Because no such constraints will exist using the new delivery method, the Exchange proposes to change the time allowed for completion of an educational module from 120 to 60 days from the time that the module is assigned to the program participants.[6]

While anticipating the use of the 60-day deadline in most cases, the Exchange proposes to build flexibility into the rule by providing the option of designating a different timeframe where warranted. For example, training for Floor members in a certain regulatory topic may be deemed urgent and the Exchange could shorten the deadline accordingly.

Finally, the Exchange proposes amending the rule to clarify that all qualified members, i.e., all members qualified to work on the Floor of the Exchange, regardless of whether they are active members, are required to complete the mandatory FMCE Program requirements.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] In order to ensure the integrity of the program, once the program is in place, firms will be required to certify pursuant to NYSE Rule 342.30(e) that the firm's Floor members (and qualified substitutes) have completed the educational requirements contained in Rule 103A. As a result, the Exchange expects firms will implement procedures for ensuring that their Floor members and qualified substitutes have completed the program, which procedures could include supervising individuals on firm premises while they complete the program. Given the generally small size of member firms' Floor staffs, the Exchange believes that 60 days should be ample time for a firm to ensure that its members and qualified substitutes have completed the program requirements. To assist compliance staff in this regard, the system being implemented by the Exchange contains tools for compliance officers to monitor the completion status of their firms' employees.

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)(iii) [8] of the Act and Rule 19b–4(f)(3) [9] thereunder. The proposed rule change goes solely to the administration of the self-regulatory organization in that it is not a substantive change to NYSE Rule 103A (that is, it neither increases nor decreases the scope of the education requirement under NYSE Rule 103A), but merely updates the rule to reflect the introduction of a new method for delivering the educational material.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2007–106 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23587 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56870; File No. SR–NYSE–2007–105]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Charged to Member Organizations for the Use of the On-Line Comparison System

November 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to reduce from $0.15 to $0.10 per trade the fee charged with respect to trades submitted to the On-Line Comparison System (''OCS'') for trade date comparison.[3] At the same time, the Exchange will eliminate all OCS access fees. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 2008, the Exchange proposes to reduce from $0.15 to $0.10 per trade the fee charged with respect to trades submitted to the OCS for trade date comparison. At the same time, the Exchange will eliminate all OCS access fees. OCS access fees are annual charges paid by members to access OCS. It has recently been the Exchange's experience that the revenues derived from OCS access fees and usage fees have exceeded the Exchange's costs in maintaining the system. As such, the fee revisions are intended to more closely align the revenues derived from OCS fees with the actual cost of running OCS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The OCS is an interactive system, which is used to perform comparison processing, such as matching of initial trade submission, correction processing and questioned trade resolution.

[4] 15 U.S.C. 78f(b).

with Section 6(b)(4) of the Act [5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–105 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–105 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23599 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56858; File No. SR–NYSE–2007–103]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 124 (Odd-Lot Orders)

November 28, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The Exchange has filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 124 (Odd-Lot Orders) to clarify the manner in which Exchange systems price and execute odd-lot orders [5] at the opening and at the re-opening after a halt in trading on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing is submitted to amend Exchange Rule 124 in order to clarify that for the opening transaction in a subject security, odd-lot market orders and all odd-lot limit orders that are eligible to receive an execution based on

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] Odd-lot orders are orders for a size less than the standard unit (roundlot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units.

the price of the opening transaction [6] shall be executed at the price of the opening transaction. Similarly, in the event of a halt in trading on the Exchange in the subject security, odd-lot market orders and all odd-lot limit orders eligible to receive an execution based on the re-opening price that are accepted by Exchange systems prior to the halt in trading or are received during the halt in trading shall be executed at the price of the re-opening transaction.

On September 6, 2007, the Exchange amended Exchange Rule 124 to modify the way in which Exchange systems priced and executed odd-lot orders (the ''Odd-lot Filing'').[7] As it pertains to openings and halts in trading, the Odd-lot Filing was intended to provide that odd-lot orders entered into the Exchange systems before the opening transaction of the subject security that would be eligible for execution based on the price of the opening transaction would be executed at the price of the opening transaction.[8] With respect to halts in trading on the Exchange, the Odd-lot Filing was also to provide that odd-lot orders accepted by Exchange systems prior to, or during, a halt in trading that are subsequently eligible to receive an execution based on the re-opening price would be executed at the price of the re-opening transaction.[9]

Currently, Exchange systems handle odd-lot orders at the opening and re-opening after a halt in trading as intended and as described above. However, the Exchange states that the use of the word ''marketable'' [10] in the rule text of subsections (c)(vi) and (c)(vii) is not accurate. Specifically as it pertains to the open, an order is neither marketable or non-marketable until the specialist determines the opening price. As such, the rule text of subsection (c)(vi) and (c)(vii) should not include the word marketable. Moreover, the use of the term marketable in (c)(vii) technically excludes non-marketable odd-lot limit orders accepted by Exchange systems prior to a halt in trading that are subsequently eligible to receive an execution based on the re-opening price from receiving an execution.[11] This would occur because the definition of marketable in the rule requires the odd-lot limit order to have been marketable ''upon receipt by the system.''

Accordingly, the Exchange proposes in this filing to amend subsection (c)(vi) of Exchange Rule 124 to clarify that odd-lot orders entered into the Exchange systems before the opening transaction of the subject security that would be eligible for execution based on the price of the opening transaction shall be executed at the price of the opening transaction. The Exchange further proposes to amend subsection (c)(vii) to clarify that, in the event of a halt in trading on the Exchange, odd-lot orders accepted by Exchange systems prior to, or during, a halt in trading that are subsequently eligible to receive an execution based on the re-opening price shall be executed at the price of the re-opening transaction.

The Exchange believes these amendments will accurately align the rule text with the operation of Exchange systems in the handling of odd-lot orders under these specific circumstances. However, the Exchange will continue to monitor the recent changes to the processing of odd-lots and confer with our constituents in order to evaluate whether further change is necessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[12] in general, and with section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also states that the proposed rule change also is designed to support the principles of section 11A(a)(1) [14] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that does not (1) Significantly affect the protection of investors of the public interest, (2) impose any significant burden on competition, and (3) have the effect of limiting the access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(5) thereunder.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–103 on the subject line.

[6] Pursuant to Exchange Rule 124(b), an odd-lot limit order is considered marketable when its limit price is at or higher than the current National best offer (in the case of an odd-lot limit to buy) and when its limit price is at or lower than the current National best bid (in the case of an odd-lot limit to sell).

[7] *See* Securities Exchange Act Release No. 56551 (September 27, 2007), 72 FR 56415 (October 3, 2007) (SR–NYSE–2007–82).

[8] *See* Exchange Rule 124 subsections (c)(vi) (relating to openings) and (c)(vii) (relating to trading halts).

[9] The Commission made minor clarifications to this paragraph pursuant to a telephone call with the Exchange. *See* telephone call among Jennifer Dodd, Special Counsel, Division of Trading and Markets, Commission, Rahman Harrison, Special Counsel, Division of Trading and Markets, Commission, and Gillian Rowe, Principal Rule Counsel, NYSE, on November 19, 2007.

[10] *See* Exchange Rule 124(c) which defines ''marketable odd-lot orders'' as odd-lot market orders and odd-lot limit orders that are marketable upon receipt.

[11] Exchange Rule 124(d) governs the execution and pricing of odd-lot limit orders that are non-marketable upon receipt that become marketable.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(5).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–103 and should be submitted on or before December 27, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23651 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56856; File No. SR–OCC–2007–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Delayed Start Options

November 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 9, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to clear and settle delayed start options (''DSOs'') by the Chicago Board Options Exchange (''CBOE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change—Purpose of Rule Change

The purpose of the proposed rule change is to accommodate the introduction of DSOs by the CBOE. Initially CBOE proposes to list DSOs only on indexes.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] File No. SR–CBOE–2007–26. The Commission recently issued an order granting approval of SR–CBOE–2007–26 that allows CBOE to list and trade DSOs. Securities Exchange Act Release No. 56855 (November 28, 2007).

Description of Product

As described by CBOE, a DSO is identical to existing standardized options with one exception: at the commencement of trading in a series, DSOs of that series will not have a set exercise price. Instead, a DSO will commence trading with a preestablished formula that the listing exchange will use to fix the exercise price for the DSO on a specified date prior to the DSO's expiration date (''exercise price setting date''). The CBOE is currently proposing that an ''at-the-money'' DSO on an index will be assigned an exercise price equal to the closing value of the underlying index on the exercise price setting date, rounded to the increment established by CBOE at the time the DSO commences trading. CBOE has also indicated that it may introduce in- or out-of-the-money DSOs. Those DSOs would, according to CBOE, have the same terms as at-the-money DSOs except that the exercise price would be set at a specified percentage either in- or out-of-the-money on the exercise price setting date (*e.g.*, 5% in-the-money or 5% out-of-the-money).

The listing exchange will specify the exercise price setting date prior to the opening of each series of DSOs. According to CBOE, the exercise price setting date for each series of DSOs traded on CBOE will initially be three months prior to the DSO's expiration date. In other words, each series of DSOs will trade without an exercise price until three months prior to expiration. From the exercise price setting date forward, all options terms will be fixed, and DSOs will be fungible with any other option on the same underlying interest having the same terms such as exercise price, expiration date, etc. An exchange may determine to issue series of DSOs with more or less than three months between the exercise price setting date and the expiration date.

A DSO will not have an exercise price until the exercise price setting date, and it will not be exerciseable until after that date. Thus, an ''American-style'' DSO would be exerciseable only between the exercise price setting date and the expiration date. A ''European-style'' DSO, like any other European-style option, would be exercised only on or near the expiration date.

Proposed Changes to OCC's By-Laws and Rules

In order to issue and clear DSOs, OCC needs to make several definitional changes in its By-Laws. A definition of DSO would be added to Article I of the By-Laws. OCC is also proposing to

amend the existing definition of ''American-style'' in Article I of its By-Laws to make clear that unlike other American-style options, DSOs could not be exercised beginning at the commencement time for the options. Instead, American-style DSOs could only be exercised after their exercise price is set. Additionally, OCC proposes to amend the existing definition of ''series'' to provide that DSOs with the same expiration date, unit of trading, exercise price setting date, and exercise price setting formula will comprise the same series until their exercise price is set. At that point DSOs with the same expiration date, unit of trading and exercise price will, like other options, comprise the same series. Similarly, OCC is proposing to amend the existing definition of ''variable terms'' in Article I because DSOs will not have an exercise price as one of their variable terms until their exercise price setting date. Instead, DSOs will have both an exercise price setting date and an exercise price setting formula as variable terms until that time. OCC is proposing to add two definitions to Article I as well. Both ''exercise price setting date'' and ''exercise price setting formula'' are needed to reflect the fact that DSOs will not have an exercise price when they begin trading and to describe when and how an exercise price will be fixed by the listing exchange.

OCC proposes amending Article VI of its By-Laws to clarify that an exchange listing DSOs need not set the exercise price for such options at the time each series is opened for trading but instead must set the exercise price setting date and the exercise price setting formula, and that an American-style DSO may not be exercised until after its exercise price has been set. The proposed amendment to the definition of ''series of options'' in Article XVII is similar to the amendment to the definition of ''series'' in Article I and like that amendment is to clarify that DSOs with the same expiration date, unit of trading, exercise price setting date, and exercise price setting formula will comprise the same series until their exercise price is set. The amendments to Article XVII, Section 2(a) and to Rule 1802(a), like the changes to the definition of ''American-style'' in Article I and in Article VI, would prohibit holders of American-style DSOs from exercising until the exercise price is set.

Proposed amendments to Rule 401(a)(1) are to permit matched trade reports for DSOs to contain the exercise price setting date and exercise price setting formula rather than an exercise price until the exercise price is set.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act, as amended, because they are designed to promote the prompt and accurate clearance and settlement of transactions in DSOs, which are a new product designed to allow customers to manage risk associated with the volitility of an underlying interest. DSOs are very similar to existing options currently cleared by OCC and would be governed by substantially the same rules and procedures to which existing options are subject. The proposed rule change is not inconsistent with the existing rules of OCC, including rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[4] The purpose of the proposed rule change is to amend OCC's By-Laws and Rules so that OCC may clear and settle DSOs. Accordingly, after careful review the Commission finds that the proposed rule change meets the requirements of Section 17A(b)(3)(F) of the Act because the proposed rule change should result in the prompt and accurate clearance and settlement of securities transactions, specifically transactions in DSOs.

OCC has requested that the Commission approve the proposed rule prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow CBOE to commence trading of DSOs without any unnecessary delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2007–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2007–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/sr_occ_07_13.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2007–13 and should be submitted on or before December 27, 2007.

[4] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–13) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23610 Filed 12–5–07; 8:45 am]

BILLING CODE 8011–01–P

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6002]

60-Day Notice of Proposed Information Collection: Public Diplomacy Evaluation Office: Performance Measurement, Evaluation and Public Diplomacy Program Surveys, OMB Control No. 1405–0158

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Public Diplomacy Evaluation Office: Performance Measurement, Evaluation and Public Diplomacy Program Surveys.
- *OMB Control Number:* 1405–0158.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Public Diplomacy Evaluation Office (PDEO).
- *Form Number:* None.
- *Respondents:* Respondents of program assessments and/or program monitoring of public diplomacy activities under the collection may include program applicants, participants, alumni, administrators, and hosts or grantee organizations involved in the programs that PDEO is assessing or evaluating.
- *Estimated Number of Respondents:* 25,131.
- *Estimated Number of Responses:* 25,131.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 12,565 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from December 6, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *CrowleyML@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Melinda L. Crowley, U.S. Department of State, Public Diplomacy Evaluation Office (PDEO), 301 4th Street, SW., Room 848 (SA–44), Washington, DC 20547
- Fax: 202–203–7143.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Melinda L. Crowley, U.S. Department of State, Public Diplomacy Evaluation Office (PDEO), 301 4th Street, SW., Room 848 (SA–44), Washington, DC 20547, who may be reached on 202–203–7136 or at *CrowleyML@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The information collection allows PDEO the ability to regularly collect necessary data from program participants. The performance measurement and evaluation data obtained from program participants allows PDEO to better assess and improve the DOS exchange and public diplomacy programs, while complying with the reporting requirements mandated by Congress and the Office of Management and Budget. These programs assist the Department of State's mission to promote a balanced and accurate view of the United States and build world partnerships.

Methodology

Data captured through this information collection will be derived from respondents' electronic surveys, personal interviews and/or focus groups. Respondents include program applicants, participants, alumni, administrators, hosts and grantee organizations involved in the programs that PDEO is assessing or evaluating.

Dated: November 15, 2007.

Rick Ruth,

Executive Director, Public Diplomacy Evaluation Office, Department of State.

[FR Doc. 07–5967 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice: 6005]

60-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status; Form DS–2019, OMB No. 1405–0119

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status.
- OMB Control Number: OMB No. 1405–0119.
- Type of Request: Revision of a Currently Approved Collection.
- Originating Office: Office of Exchange Coordination and Designation—ECA/EC/AG and ECA/EC/PS.
- Form Number: Form DS–2019.
- Respondents: U.S. Department of State designated sponsors.
- Estimated Number of Respondents: 1,460.
- Estimated Number of Responses: 350,000 annually.
- Average Hours Per Response: 45 minutes.
- Total Estimated Burden: 262,500 hours.

• Frequency: On occasion.

• Obligation to Respond: Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from December 6, 2007.

ADDRESSES: You may submit comments identified by any of the following methods:

• Persons with access to the Internet may also view this notice and provide comments by going to the *regulations.gov* Web site at: *http://www.regulations.gov/index.cfm*.

• Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, Office of Exchange Coordination and Designation, SA–44, 301 4th Street, SW, Room 734, Washington, DC 20547.

• E-mail: *jexchanges@state.gov*.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The form has been revised to update the duration of program participation and the addition of a new category of Intern for which regulations are in place.

Methodology

Access to Form DS–2019 is made available to Department designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

Dated: September 28, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination & Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–23667 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 6006]

60-Day Notice of Proposed Information Collection: Form DS–4071, Export Declaration of Defense Technical Data or Services; OMB Control Number 1405–0157

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comments in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• Title of Information Collection: *Export Declaration of Defense Technical Data or Services.*

• OMB Control Number: *1405–0157.*

• Type of Request: *Extension of Currently Approved Collection.*

• Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.*

• Form Number: *DS–4071.*

• Respondents: *Business and Nonprofit Organizations.*

• Estimated Number of Respondents: *2,000.*

• Estimated Number of Responses: *10,000.*

• Average Hours Per Response: *15 minutes.*

• Total Estimated Burden: *2,500 hours.*

• Frequency: *On Occasion.*

• Obligation to Respond: *Mandatory.*

DATES: The Department will accept comments from the public up to 60 days from December 6, 2007.

ADDRESSES: Comments and questions should be directed to Patricia C. Slygh, the Acting Director of the Office of Defense Trade Controls Management, Department of State, who may be reached via the following methods:

• *E-mail: slyghpc@state.gov.*

• *Mail:* Patricia C. Slygh, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

• *Fax:* 202–261–8199.

You must include the information collection title in the subject lines of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the information collection and supporting documents, to Patricia C. Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2830, or via e-mail at *slyghpc@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Actual export of defense technical data and defense services will be electronically reported directly to the Directorate of Defense Trade Controls (DDTC). DDTC administers the International Traffic in Arms Regulations (ITAR) and Section 38 of the Arms Export Control Act (AECA). The actual exports must be in accordance with requirements of the ITAR and Section 38 of the AECA. DDTC will monitor the information to ensure there is proper control of the transfer of sensitive U.S. technology.

Methodology: The exporter will electronically report directly to DDTC the actual export of defense technical data and defense services using DS–4071. DS–4071 is available on DDTC's Web site, *http://www.pmddtc.state.gov.*

Dated: November 20, 2007.

Frank J. Ruggiero,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E7–23668 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 6004]

30-Day Notice of Proposed Information Collection: Refugee Biographic Data, OMB Control Number 1405–0102

ACTION: Notice of request for public comments and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Refugee Biographic Data.
- OMB Control Number: 1405–0102.
- Type of Request: Extension of a Currently Approved Collection.
- Originating Office: Bureau of Population, Refugees, and Migration, PRM/A.
- Form Number: N/A.
- Respondents: Refugee applicants for the U.S. Resettlement Program.
- Estimated Number of Respondents: 70,000.
- Estimated Number of Responses: 70,000.
- Average Hours Per Response: One-half hour.
- Total Estimated Burden: 35,000 hours.
- Frequency: Once per respondent.
- Obligation to Respond: Required to Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 6, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- E-mail: *kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503.
- Fax: 202–395–6974

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Jessica Firestein, PRM/Admissions, 2401 E Street, NW., Suite L505, SA–1 Washington, DC 20522, who may be reached at 202–663–1045.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency to ensure initial reception and placement in the U.S. under the United States Refugee Program administered by the Bureau for Population, Refugees, and Migration.

Methodology

Biographic information is collected in a face-to-face interview of the applicant overseas. An employee of an Overseas Processing Entity, under contract with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: November 26, 2007.

Terry Rusch,

Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. E7–23670 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice: PN–6003]

60-Day Notice of Proposed Information Collection: DS–3035, J Visa Waiver Recommendation Application, OMB Control Number 1405–0135

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* J Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau Of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–3035.
- *Respondents:* J Visa holders applying for a waiver of the two-year foreign residence requirement.
- *Estimated Number of Respondents:* 10,000.
- *Estimated Number of Responses:* 10,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 10,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from December 6, 2007.

ADDRESSES:

You may submit comments by any of the following methods:

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–3035 Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–3035 J Visa Waiver Recommendation Application, 2401 E Street, NW., Washington DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Form DS–3035 is used to determine the eligibility of a J Visa holder for a waiver of the two-year foreign residence requirement.

Methodology:

Form DS–3035 will be mailed to the Waiver Review Division of the State Department.

Dated: November 7, 2007.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–23672 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6008]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dragon's Gift: The Sacred Arts of Bhutan''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Dragon's Gift: The Sacred Arts of Bhutan,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii, from on or about February 24, 2008, until on or about May 23, 2008, the Rubin Museum of Art, New York, New York, from on or about September 18, 2008, until on or about January 5, 2009, the Asian Art Museum of San Francisco, San Francisco, California, from on or about February 1, 2009, until on or about May 31, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 29, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–23679 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6001]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership and Teacher Professional Development Program with Bosnia and Herzegovina

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–32.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: January 31, 2008.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Youth Leadership and Teacher Professional Development Program with Bosnia and Herzegovina. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a three-to four-week program in the United States focusing on leadership and civic education. The 21 participants will be secondary school students and teachers from Bosnia and Herzegovina.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Youth Leadership Program for Bosnia and Herzegovina has been implemented annually since 1999 by a partnership of the Office of Public Affairs (OPA) in the U.S. Embassy in Sarajevo and the U.S. grantee organization. The goals of the program are (1) to provide a civic education program that helps the participants understand civic participation and the rights and responsibilities of citizens in a democracy; (2) to develop leadership skills among secondary school students and teachers appropriate to their needs; and (3) to build personal relationships among high school students and teachers from Bosnia and Herzegovina and the United States. A successful project will be one that nurtures a cadre of students and teachers to be actively engaged in addressing issues of concern in their schools and communities upon their return home and are equipped with the knowledge, skills, and confidence to become citizen activists.

Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, seminars, and other activities that are designed to achieve the program's stated goals. Multiple opportunities for participants to interact with American youth and educators must be included.

The applicant should present a program plan that allows the participants to thoroughly explore civic education in the United States in a creative, memorable, and practical way. Activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home.

Applicants should outline their project team's capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) work with individuals from Bosnia-Herzegovina or other areas of Southeast Europe. Applicants need not have a partner in Bosnia and Herzegovina, as the Office of Public Affairs (OPA) of the U.S. Embassy in Sarajevo will recruit and select the participants from selected cities in the Federation and in Republika Srpska and will provide a pre-departure orientation.

The U.S. project activities should take place in spring 2009. Applicants should propose the period of the exchange, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be no less than three weeks and up to four

weeks in duration. Program development should begin in the late summer/early fall of 2008.

The participants will be 18 high school students between the ages of 15 and 18 who have demonstrated leadership abilities in their schools and/or communities, and three high school teachers who have demonstrated an interest in youth leadership and are expected to remain in positions where they can continue to work with youth. Participants will be proficient in the English language.

In pursuit of the goals outlined above, the program provided by the U.S. grantee organization will include the following:

- Program preparation sessions at the pre-departure orientation in Sarajevo.
- A welcome orientation.
- Design and planning of activities that provide a substantive program on civic education and leadership through both academic and extracurricular components. Activities should take place in schools and in the community. Community service must also be included. It is crucial that programming involve American participants wherever possible.
- Opportunities for the educators to work with their American peers and other professionals and volunteers to help them foster youth leadership, civic education, and community service programs at home.
- Logistical arrangements, homestays, disbursement of stipends/per diem, local travel, and travel between sites.
- A closing session to summarize the project's activities and prepare participants for their return home.
- Follow-on activities in Bosnia and Herzegovina after the participants have returned home designed to reinforce values and skills imparted during the U.S. program.

The proposal must demonstrate how the stated goals will be met. Applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation. The proposal narrative should also provide detailed information on the major program activities. Additional important program information and guidelines for preparing the narrative are included in the Project Objectives, Goals, and Implementation (POGI).

Programs must comply with J–1 visa regulations. Please refer to the other documents in the solicitation for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2008.

Approximate Total Funding: $85,000, pending availability of funds.

Approximate Number of Awards: One.

Approximate Average Award: $85,000.

Anticipated Award Date: Pending availability of funds, proposed start date is summer 2008.

Anticipated Project Completion Date: December 31, 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Please note that cost sharing is one of the criteria by which proposals will be judged.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years' experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $85,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Youth Programs Division, Office of Citizen Exchanges (ECA/PE/C/PY), Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7505, fax (202) 203–7529, e-mail *lantzcs@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–08–32) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition. Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number (ECA/PE/C/PY–08–32) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package.

The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424, which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, Fax: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent

specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: Thursday, January 31, 2008.

Reference Number: ECA/PE/C/PY–08–32.

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and six copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–08–32, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any essential attachments, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Office of Public Affairs at the U.S. Embassy in Sarajevo for its review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Please see the review criteria in the accompanying Project Objectives, Goals, and Implementation (POGI) document.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–7505, Fax: (202) 203–7529, E-mail: *LantzCS@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–32.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 26, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–23675 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5971]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 3:45 p.m. on Tuesday, December 18, 2007, at the U.S. Department of State, 2201 C Street, NW., Room 1107, Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic, Energy and Business Affairs Daniel S. Sullivan and Committee Chairman R. Michael Gadbaw. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on Total Economic Engagement, including a regional focus on Latin America, the pending U.S. free trade agreements with Colombia, Peru, Panama, and Korea, and Subcommittee reports and discussions led by the Strategic Regions Subcommittee and the Economic Sanctions Subcommittee.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, December 14, their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*BoothSL@state.gov*), or telephone (202) 647–9204. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov.*

Dated: November 28, 2007.

David R. Burnett,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E7–23691 Filed 12–5–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification: Second in Command (SIC) Pilot Type Rating, Federal Regulation Part 61

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected is from airmen and is used to determine compliance with FAA regulations regarding second-in-command certification for the operation of aircraft.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Second in Command (SIC) Pilot Type Rating, Federal Regulation part 61.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0693.

Forms(s): 8710–1.

Affected Public: A total of 3,000 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 6 minutes per response.

Estimated Annual Burden Hours: An estimated 300 hours annually.

Abstract: The information collected is from airmen and is used to determine compliance with FAA regulations regarding second-in-command certification for the operation of aircraft.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5956 Filed 12–6–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Office of Dispute Resolution Procedures for Protests and Contact Disputes, 14 CFR Part 17

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Office of Dispute Resolution Procedures for Protests and Contact Disputes, 14 CFR Part 17.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0632.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 40 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 20.5 hours per response.

Estimated Annual Burden Hours: An estimated 820 hours annually.

Abstract: 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5957 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; 2005 Private Single-Engine Land Pilot Assessment of Instruction and Practical Test Experiences

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This project involves collecting data from recently certified ASEL pilots on the quality of their flight training and practical test experiences.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: 2005 Private Single-Engine Land Pilot Assessment of Instruction and Practical Test Experiences.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0696.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 6,250 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 6,250 hours annually.

Abstract: This project involves collecting data from recently certified ASEL pilots on the quality of their flight training and practical test experiences.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5958 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Airport Noise Compatibility Planning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Noise Compatibility Planning.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0517.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 15 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 3,360 hours per response.

Estimated Annual Burden Hours: An estimated 50,400 hours annually.

Abstract: The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information

collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5959 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification of Airports, 14 CFR Part 139.

AGENCY: Federal Aviation Administration (FAA), DoT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This rule revised the airport certification regulations and establishes certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Type: Certification of Airports, 14 CFR part 139.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0675.

Forms(s): 5280–1.

Affected Public: A total of 600 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 22 hours per response.

Estimated Annual Burden Hours: An estimated 52,993 hours annually.

Abstract: This rule revised the airport certification regulations and establishes certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats. The changes to 14 CFR Part 139 result in additional information collections from respondents.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5960 Filed 12–05–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; SFAR No. 105 Operating Limitations for Unscheduled Arrivals at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This rule implements a reservation system restricting the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: SFAR No. 105 Operating Limitations for Unscheduled Arrivals At Chicago's O'Hare International Airport.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0694.

Forms: There are no FAA forms associated with this collection.

Affected Public: A total of 10,192 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2 minutes per response.

Estimated Annual Burden Hours: An estimated 340 hours annually.

Abstract: This rule would implement a reservation system restricting the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport. Respondents would be any operator seeking approval to conduct such an arrival during the peak hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 1007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5961 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; FAA Entry Point Filing Form—International Registry

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The respondents supply information through the AC 8050–135 to the FAA Civil Aviation Registry's Aircraft Registration Branch in order to obtain an authorization code for access to the International Registry.

DATES: Please submit comments by February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Entry Point Form—International Registry.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0697.

Forms(s): 8050–135.

Affected Public: A total of 15,000 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 7,500 hours annually.

Abstract: The respondents supply information through the AC 8050–135 to the FAA Civil Aviation Registry's Aircraft Registration Branch in order to obtain an authorization code for access to the International Registry.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprise Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 29, 2007.

Carla Mauney,

FAA Information collection Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5962 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–45]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition. While the comment period is shorter than the usual 20-day comment period, the FAA recognizes and must balance the need to provide for public comment as well as to be responsive to the petitioner and the public because of the impending January 31, 2008, compliance date.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 17, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2000–8425 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Brenda Courtney,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2000–8425.

Petitioner: Aero Sports Connection, Inc.

Section of 14 CFR Affected: 14 CFR 61.431 and 103.1.

Description of Relief Sought: To extend the exemption termination date of Exemption No. 6080, as amended, which permits individuals authorized by Aero Sports Connection, Inc. (ASC) to give instruction in two-place powered ultralight vehicles that have a maximum empty weight of 496 pounds, have a maximum fuel capacity of 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

[FR Doc. E7–23698 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–43]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before December 26, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0027 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0027.
Petitioner: Midcoast Aviation.
Section of 14 CFR Affected: § 145.103(b).
14 CFR.
Description of Relief Sought: To allow Midcoast to open a satellite repair station with limited airframe and limited powerplant ratings. Work to be performed would be offsite at local airports or within customer's hangers.

[FR Doc. E7–23699 Filed 12–5–07; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–44]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–26461 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Brenda Courtney,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–26461.
Petitioner: ASU Security, Inc.
Section of 14 CFR Affected: 14 CFR 135.203(b) minimum altitudes, 135.205(b) weather minimums, 135.267 flight time limitations, 135.271 rest periods for HEMES crews, and 135.411 maintenance (only as to cargo hook).
Description of Relief Sought: To allow ASU Security to operate a helicopter under contract with the Sonoma County, California, Sheriff's Department in order to allow the department to seek

reimbursement from the patients it transports.

[FR Doc. E7–23700 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, January 15, 2008, from 9 a.m. to 4:30 p.m., and Wednesday, January 16, 2008, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the CGH Technologies Inc. Office, Eighth Floor, Training Conference Room, 600 Maryland Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, Executive Director, ATPAC, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4527.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, January 15, 2008, from 9 a.m. to 4:30 p.m., and Wednesday, January 16, 2008, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Executive Director, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Richard Jehlen no later than January 11, 2008. The next quarterly meeting of the FAA ATPAC is scheduled for April, 2008, in Baltimore, MD.

Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on November 29, 2007.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E7–23692 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2007–29075]

National Transit Database: Rural Reporting Manual

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final National Transit Database Rural Reporting Manual.

SUMMARY: This notice announces the availability of the Federal Transit Administration's (FTA) *National Transit Database (NTD) Rural Reporting Manual (Rural Manual).* Pursuant to 49 U.S.C. 5335, FTA requires recipients of grants under 49 U.S.C. 5311 (Other Than Urbanized Area Formula Grants) to provide an annual report to the Secretary of Transportation via the NTD reporting system and according to a uniform system of accounts (USOA). 49 U.S.C. 5311(4) provides additional specifications for annual reporting from recipients of Section 5311 grants. The Rural Manual provides complete details as to FTA's implementation of these annual requirements through reporting to the Rural NTD Module. On September 5, 2007, FTA published a notice in the **Federal Register** (72 FR 17564) inviting comments on the proposed Rural Manual. This notice provides responses to those comments and announces the availability of the final 2007 Rural Manual.

DATES: *Effective Date:* December 6, 2007.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry, and was established by Congress to ''help meet the needs of * * * the public for information on which to base public transportation service planning * * *'' (49 U.S.C 5335). Recipients of grants under 49 U.S.C. 5307 (Urbanized Area Formula Grants) or under 49 U.S.C. 5311 (Other Than Urbanized Area Formula Grants) are required by statute to submit data to the NTD. The statute further specifies that recipients of Section 5311 Grants are required to submit an annual report ''containing information on capital investment, operations, and service provided with funds received * * * including,

(A) Total annual revenue;
(B) Sources of revenue;
(C) Total annual operating costs;
(D) Total annual capital costs;
(E) Fleet size and type, and related facilities;
(F) Revenue vehicle miles; and
(G) Ridership.'' (49 U.S.C. 5311)

The *National Transit Database Rural Reporting Manual (Rural Manual)* provides complete details as to FTA's implementation of these annual requirements for recipients of grants under 49 U.S.C. 5311 through reporting to the Rural NTD Module.

Pursuant to 49 U.S.C. 5334, FTA published a **Federal Register** Notice (72 FR 17549) inviting the public to comment on the binding obligations contained in the *Rural Manual.* As provided for in 49 U.S.C. 5335, the *Rural Manual* expands NTD reporting to include recipients of grants under 49 U.S.C. 5311 (Other Than Urbanized Area Formula Grants). Recipients of these grants include the 50 States, Puerto Rico, American Samoa, Guam, and the Northern Marianas. (By statute, the Virgin Islands are considered to be an urbanized area for purposes of FTA grant-making). A number of Indian Tribes are also direct recipients of grants under 49 U.S.C. 5311. In addition to fulfilling a statutory requirement, these data will be used in the annual *National Transit Summaries and Trends* report, the biennial *Conditions and Performance Report to Congress,* and in meeting FTA's obligations under the Government Performance and Results Act.

This notice announces the availability of the final *Rural Manual* on the NTD Web site, *http://www.ntdprogram.gov.*

II. Comments and FTA Response to Comments

On September 5, 2007, FTA published a notice in the **Federal Register** (72 FR 17459) inviting comments on the proposed *Rural Manual*. FTA received six comments, including two that were filed as comments on FTA's Notice of Proposed Rulemaking for 49 CFR part 630, but which FTA considered in its review of the *Rural Manual*. One comment, from a large State Department of Transportation (State DOT), merely commended the 2007 NTD *Rural Manual*, ''especially the inclusion of an Excel spreadsheet * * * to input data.'' FTA hereby responds to the remaining five comments in the following order: (a) Reporting Deadlines; (b) Intercity Bus Issues; (c) Changes in Reporting Requirements; (d) Alignment with Congressional Intent; and (e) Other Comments.

(a) *Reporting Deadlines:*

Two comments expressed concern about the October 28 reporting deadline proposed in the *Rural Manual* for certain reporters. One comment suggested a new reporting deadline to be 120 days from the publication of the final 2007 *Rural Manual*.

FTA Responds: FTA understands this concern, and amends the 2007 Rural NTD Reporting Deadline to be February 29, 2008, for reporters whose 2007 Fiscal Year ended on or before September 30, 2007. The 2007 Rural NTD Reporting Deadline will continue to be April 30, 2008, for those reporters whose 2007 Fiscal Year ended or will end between October 1, 2007, and December 31, 2007.

(b) *Intercity Bus Issues:*

Several comments were filed in an earlier docket on FTA's Notice of Proposed Rulemaking for 49 CFR part 630, based on a draft version of the *Rural Manual* available at *http://www.ntdprogram.gov.* One comment expressed concern that the Rural NTD did not include a separate mode for Intercity Bus. Another comment asked why Section 5311 grants to intercity bus subrecipients did not cover both operating grants and capital grants.

FTA Responds: FTA agrees with these commenters and has established a separate Intercity Bus mode in the final edition of the *Rural Manual*. FTA has also provided for the collection of both capital grants and operating grants to intercity bus subrecipients.

One comment asked why intercity bus carriers were not required to submit fleet data, nor to submit safety data on fatalities, injuries, and major incidents.

FTA Responds: FTA reminds the commenter that these data will be collected from State DOTs; intercity bus providers will not be reporting directly to the Rural NTD Module. During FTA's outreach in development of this module, FTA found that State DOTs did not normally collect the same extensive information from intercity bus grant set-aside subrecipients (which are typically private, for-profit corporations), as they collect from typical Section 5311 grant subrecipients. FTA has created the streamlined report for subrecipients of the intercity bus set-aside in order to minimize reporting burden on State DOTs.

One comment asked if the condensed RU–20 form for intercity bus is the only form to be reported for intercity bus subrecipients. This comment also asked for clarification as to how subrecipients that receive intercity bus set-aside funds, as well as other Section 5311 funds, should be reported by the State DOT. This comment suggested that the streamlined RU–20 form for intercity bus should be reclassified as a unique form with its own instructions, and asked for clarification as to how intercity bus data are added to the automatically-generated RU–30 form.

FTA Responds: FTA clarifies that the intercity bus form is to be used only for reporting data on those Section 5311 grant subrecipients that receive funds from the intercity bus set-aside pursuant to 49 U.S.C. 5311(f) and that do not receive any other Section 5311 funds from the State DOT. In the event that a single subrecipient receives funds both from the intercity bus set-aside pursuant to 49 U.S.C. 5311(f), as well as from other Section 5311 funds, then the State DOT should provide a complete report for that subrecipient on the regular RU–20 form. FTA will consider reclassifying the streamlined RU–20 form for intercity bus subrecipients with a different form number for the 2008 Report Year, but declines to do so for the 2007 Report Year in the interests of making the *Rural Manual* available to reporters as expeditiously as possible. Instructions on completing both versions of the RU–20 form are available through the *Rural Manual*, through periodic NTD training, and through technical assistance from NTD validation analysts. FTA notes that intercity bus data appears on the RU–30 form in data fields specifically labeled as such, e.g., ''5311 intercity bus unlinked passenger trips.''

(c) *Changes in Reporting Requirements:*

Two comments objected to the significant changes in the proposed reporting requirements in the *Rural Manual* from those used in the 2002 and 2006 Rural NTD Pilot Programs. Both commenters noted that their efforts to develop reporting software in order to combine NTD reporting requirements with their own State's internal reporting requirements were negatively impacted by the change in the proposed reporting requirements for the 2007 Report Year from the 2006 Rural NTD data collection. One of these comments suggested that data requirements in the *Rural Manual* that were not included in the 2006 Rural NTD data collection should be voluntary for the 2007 Report Year.

FTA Responds: FTA reminds commenters that the 2006 Rural NTD data collection was developed prior to the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU.) SAFETEA–LU amended 49 U.S.C. 5311(4) to require that recipients of Section 5311 Grants ''submit an annual report * * * containing information on capital investment, operations, and service provided with funds received under this section, including—

(A) Total annual revenue;
(B) Sources of revenue;
(C) Total annual operating costs;
(D) Total annual capital costs;
(E) Fleet size and type, and related facilities;
(F) Revenue vehicle miles; and
(G) Ridership.''

The additional reporting requirements proposed in the *Rural Manual* were designed in large part to conform to these statutory requirements. In particular, FTA proposed requesting additional information on sources of revenue, fleet size, and fleet type in order to meet these requirements.

FTA declines to make the changed reporting requirements voluntary for the 2007 Report Year. FTA reminds the commenters, however, that pursuant to 49 CFR § 630.10, reporting entities may request a waiver of one or more sections of the reporting requirements if the data cannot be reported ''without unreasonable expense and inconvenience.'' FTA will consider the expense and inconvenience of providing certain data for the first time in evaluating waivers filed for the 2007 Report Year.

(d) *Alignment with Congressional Intent:*

Two comments objected to collecting data for individual subrecipients of Section 5311 Grants. One comment suggested that FTA should only require State DOTs to provide reports directly to

the RU–30 State Summary Form. FTA is currently proposing to compile the RU–30 State Summary Form automatically from the various RU–20 Forms completed for each subrecipient by each State DOT. This commenter also asked if FTA intends to publish individual subrecipient data.

FTA Responds: FTA believes that collecting individual subrecipient data is in alignment with Congressional intent. FTA notes that individual subrecipient data were part of the 2006 Rural NTD data collection. Additionally, 49 U.S.C. 5335(b) specifies that FTA may make a Section 5311 Grant ''only if the applicant, and any person that will receive benefits directly from the grant, are subject to [NTD reporting.]'' Subrecipients of Section 5311 Grants are direct beneficiaries of these Grants and so are clearly subject to NTD reporting by 49 U.S.C. 5335(b). Additionally, many of the specific reporting requirements delineated in 49 U.S.C. 5311(4), such as ''total annual revenue,'' ''total annual operating costs,'' and ''total annual capital costs,'' only make sense in the context of data being provided at the subrecipient level. Since most recipients of Section 5311 Grants are State DOTs, it seems unlikely that Congress was contemplating that the annual report required by 49 U.S.C. 5311(4) should contain, for example, the ''total annual revenue'' for a State DOT. Finally, FTA notes that under 49 U.S.C. 5335 FTA may ''request and receive appropriate information from any source'' for the NTD. ''Any source'' includes the subrecipients of Section 5311 Grants. Thus, FTA declines to adopt the suggestions to only collect Statewide summary data and not to collect individual subrecipient data.

In response to the question as to whether FTA intends to publish individual subrecipient data, FTA does not believe that it has the authority to withhold individual subrecipient data from the public. Nevertheless, specific data products using the Rural NTD data are still under development. The role of individual subrecipient data in public data products has not yet been determined by FTA.

(e) *Other Comments:*

One comment asked a number of specific questions regarding the RU–20 form. This comment asked if a reporter completing the ''Address'' line, but not the ''P.O. Box'' line would be considered to have filed an incomplete report.

FTA Responds: No, FTA would not consider such a report to be incomplete.

The comment asked FTA to remove certain reporting lines for total revenues and total expenditures, which are currently manually entered, and which appear to be duplicated by certain other lines on the RU–20 form that are automatically calculated.

FTA Responds: FTA notes that these lines are not actually duplicated. Line 5 on the proposed RU–20 asks for ''Total Annual Operating Expenses,'' whereas Line 12 auto-calculates the ''Total Annual Operating Revenues Expended.'' While these lines will frequently be the same, they may be different in the case of a subrecipient that is operating at a deficit. The same principle applies to Line 13 ''Annual Capital Costs,'' and Line 18, which auto-calculates the ''Total Capital Funds Expended.''

The comment asked FTA to clarify how a reporter should report revenue for a subrecipient that is providing service under contract to a recipient of Federal funds.

FTA Responds: Revenues received by a subrecipient for providing service under contract should simply be reported as contract revenue. It is not necessary for reporters to determine the ultimate source of the funds by which the contract was paid.

The comment asked why the proposed RU–20 form did not provide for revenues received from FTA's Section 5303, 5304, and 5307 Grant Programs.

FTA Responds: Recipients of Section 5307 Grants are required to report as urbanized area reporters to the NTD. As such, recipients of Section 5307 Grants should not be included on a Rural NTD report. In rare cases, a subrecipient of Section 5311 Grants may receive Section 5303 or Section 5304 grants as well. In these rare cases, these monies should be reported as ''Other Federal Funds.'' FTA will update the 2007 *Rural Manual* to reflect this. Based on 2007 data, FTA will consider making a more specific category for these Funds in future years.

The comment proposed eliminating many of the data elements that FTA proposed for asset reporting, namely, vehicle length, seating capacity, year of manufacture, largest source of funding, and ownership code.

FTA Responds: FTA declines to drop the proposed data elements from asset reporting. FTA's Section 5311 Program is a major source of funding for rural transit capital assets. The proposed data elements are essential to understanding the current state of rural transit assets and the effectiveness of the Section 5311 Grant Program over time. Although there will be some reporting burden associated with the asset data in the first year, this burden will be minimized in future years by pre-filling data from the previous year's reports into the subsequent year's reports. FTA also notes that substantially fewer asset data are being requested in the Rural NTD than are requested from urbanized area reporters. The NTD requires urbanized area reporters to provide vehicle manufacturer, vehicle model number, the rebuild year of the vehicle, whether the vehicle is part of the active fleet, vehicle fuel type, vehicle standing capacity, lifetime vehicle miles, and the total actual vehicle miles for the past year. None of these data elements are being requested from Rural NTD reporters.

The comment questioned the value of collecting the number of volunteer drivers, and asked for clarification as to whether volunteer vehicles should be reported in the asset data collection.

FTA Responds: Volunteer drivers represent a pre-funded operating expense for rural transit agencies. Whereas paid drivers are accounted for in the NTD report as an operating expense, this is the only way to account for the value of volunteer drivers. FTA has updated the *Rural Manual* to reflect that volunteer vehicles are to be excluded from the capital asset data.

The comment also asked for clarification on the accounting for taxicab trips.

FTA Responds: FTA recognizes that many rural transit agencies supplement their transit service through the use of taxicab trips in order to meet the need for transit services. In order to minimize the burden to reporters, FTA is not requesting vehicle miles and vehicle hours for trips provided by taxicabs. Thus, the trips that are manually reported in Line 25 of the RU–20 Form should directly relate to the reported vehicle miles and hours. The total trips field in this line is an auto-calculated field that will sum all of the trips reported on Line 25. FTA has updated the *Rural Manual* to reflect that the unlinked passenger trips manually reported in Line 25 should be exclusive of the taxicab trips reported in Line 24.

The comment suggested that FTA should request vehicle revenue miles and vehicle revenue hours, rather than total vehicle miles and total vehicle hours.

FTA Responds: FTA adopts the proposed suggestion, and changes the fields on the form to be ''vehicle revenue miles'' and ''vehicle revenue hours.'' FTA notes that this change conforms with 49 U.S.C. 5311(4)(f), which specifies that FTA is to collect revenue vehicle miles. Furthermore, in order to minimize reporting burden, FTA has updated the guidance in the *Rural Manual* to indicate that for rural

demand response systems, all miles and hours from garage departure to garage return during revenue service are to be considered ''revenue miles'' and ''revenue hours.'' Revenue miles and hours for demand response service will continue to exclude miles and hours for training and maintenance. Revenue miles and hours for bus service will continue to exclude deadhead miles and hours, as well as miles and hours for training and maintenance.

The comment suggested replacing the terms ''Regular Transit Trips'' and ''Special Service Trips'' with the terms ''Unlinked Passenger Trips,'' and ''Contracted Trips.''

FTA Responds: FTA adopts the proposal to use the term ''Regular Unlinked Passenger Trips.'' FTA has updated the *Rural Manual* to reflect that the term ''unlinked'' only refers to those few rural systems that have passenger transfers. FTA has also changed the term ''Contracted Trips'' to the term ''Coordinated Unlinked Passenger Trips,'' and has updated the *Rural Manual* to reflect that this refers to those trips provided as categorical service under contract.

The comment expressed concern about the burden of providing separate data by mode.

FTA Responds: FTA notes that although FTA asks if a sub-recipient provides fixed-route service or deviated-fixed-route service, FTA considers both of these services to be a single mode: the ''Bus'' mode. Additionally, FTA notes that only the data on Line 25, containing vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and coordinated unlinked passenger trips, is provided by mode. FTA believes that reporters should be able to provide this data separately for their bus, demand response, and vanpool modes, and that this data will be valuable to the public.

The comment suggested that FTA should be prepared to offer extensive training on the Rural NTD.

FTA Responds: FTA has offered Rural NTD Training in the past, and will continue to do so. In particular, FTA offered three Rural NTD training sessions in 2007, and has additional training sessions planned for 2008.

Issued in Washington, DC, this 28th day of November 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–23632 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2007–0034]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 4, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2007–0034] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Markus Price, NHTSA, 1200 New Jersey Avenue, SE., W43–472 NVS–121, Washington, DC 20590.

Mr. Markus Price's telephone number is (202) 366–0098. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 571.125, Warning Devices.

OMB Control Number: 2127–0505.

Affected Public: Business or other for profit organizations.

Form Number: This collection of information uses no standard forms.

Abstract: 49 U.S.C. 3011, 30112, and 30117 (Appendix 1) of the National Traffic and Motor Vehicle Safety Act of 1996, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as she/he deems necessary. Using this authority, the agency issued FMVSS no.125, ''Warning Devices'' (Appendix 2), which applies to devices, without self contained energy sources, that are designed to be carried mandatory in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds and voluntarily in other vehicles. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicles.

Estimated Annual Burden: 1.

Number of Respondents: 3.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on November 30, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–23690 Filed 12–5–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2008 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. section 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2008 apply to compensation paid in calendar year 2008.

FOR FURTHER INFORMATION CONTACT: David G. Mills, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–0047 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2008 under section 3201(b) on employees is 3.9 percent of compensation. The tier 2 tax rate for 2008 under section 3221(b) on employers is 12.1 percent of compensation. The tier 2 tax rate for 2008 under section 3211(b) on employee representatives is 12.1 percent of compensation.

Dated: November 3, 2007.

Nancy Marks,

Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

[FR Doc. 07–5955 Filed 12–3–07; 2:29 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to administer contracts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, FAX 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) Alternate I to Clause 852.236–80, Subcontracts and Work Coordination.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1.

d. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1.

e. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Extension of a currently approved collection.

Abstract: The information contained Department of Veterans Acquisition Regulation (VAAR) Clauses 852.236–72, Alternate I to 852.236–80, 852.236–82, 852.236–83, 852.236–84, and 852.236–88 is necessary for VA to administer construction contracts, and to carry out its responsibility to construct, maintain

and repair real property for the Department.

a. VAAR Clause 852.236–72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236–1, to submit a statement designating the branch or branches of contract work to be performed by the contractor's own forces. The VAAR clause implements the FAR clause by requiring the contractor to provide information to the contracting officer on how the contractor intends to fulfill this contractual obligation. The contracting officer uses this information to ensure that the contractor complies with the contract requirements.

b. Alternate I to Clause 852.236–80, Work Coordination, requires construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which utility lines will fit into available spaces and relate to each other and to the existing building elements. The information is used by the contracting officer and VA engineer assigned to the project to resolve any problems relating to the installation of utilities on construction contract.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The difference between this clause and the one above 852.236–82 is that this clause requires the contractor to use a computerized Network Analysis System (NAS) to prepare the cost estimate.

e. VAAR Clause 852.236–84, Schedule of Work Progress, requires construction contractors, on contracts that do not require the use of a NAS, to submit a progress schedule. The information is used by the contracting officer to track the contractor's progress under the contract and to determine whether or not the contractor is making satisfactory progress.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes. FAR Clause 52.243–4 authorizes the contracting officer to order changes to a construction contract but does not specifically require the contractor to submit cost proposals for those changes. VAAR Clause 852.236–88 requires contractors to submit cost proposal for changes ordered by the contracting officer or for changes proposed by the contractor. This information is needed to allow the contracting officer and the contractor to reach a mutually acceptable agreement on how much to pay the contractor for the proposed changes to the contract. It is also used by the contracting officer to determine whether or not to authorize the proposed changes or whether or not additional or alternate cost proposals for changes are needed.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36 hours.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—1,190 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—59 hours.

e. VAAR Clause 852.236–84, Schedule of Work Progress—2,095 hours.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—807 hours.

Estimated Average Burden Per Respondent:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—1 hour.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—10 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1 hour.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—30 minutes.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1 hour.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—119.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—119.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1,397.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—269.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23703 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0623]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on

the information needed to evaluate bidder's qualification and to support claims for price adjustment due to delay in construction caused by severe weather.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to ''OMB Control No. 2900–0623'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236.91.

OMB Control Number: 2900–0623.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR Clause 852.236.91 requires bidders to furnish information on previous experience, technical qualifications, financial resources, and facilities available to perform the work. The clause also requires contractors submitting a claim for price adjustment due to severe weather delay to provide climatologically data covering the period of the claim and covering the same period for the ten preceding years. VA uses the data collected to evaluate the bidder's qualification and responsibility, and to evaluate the contractor's claims for contract price adjustment due to weather-related delays.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 778 hours.

a. *Qualifications Data:* 758 hours.

b. *Weather Data:* 20 hours.

Estimated Average Burden Per Respondent:

a. *Qualifications Data:* 30 min.

b. *Weather Data:* 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,536.

a. *Qualifications Data:* 1516.

b. *Weather Data:* 20.

Dated: November 27, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23707 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0180'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0180.''

SUPPLEMENTARY INFORMATION:

Title: Compliance Report of Proprietary Institutions, VA Form 20–4274.

OMB Control Number: 2900–0180.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 20–4274 is used to determine whether proprietary educational institutions receiving Federal financial assistance comply with applicable civil rights statute and regulations. The collected information is used to identify areas that may indicate, statistically, disparate treatment of minority group members.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 25, 2007, at pages 54511–54512.

Affected Public: Business or other for-profit, Federal Government.

Estimated Annual Burden: 155 hours.

Estimated Average Burden Per Respondent: 75 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23709 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0474'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0474.''

SUPPLEMENTARY INFORMATION:

Title: Create Payment Request for the VA Funding Fee Payment System (VA FFPS) Computer Generated Funding Fee Receipt, VA Form 26–8986.

OMB Control Number: 2900–0474.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans obtaining a VA-guaranteed home loan must pay a funding fee to VA before the loan can be guaranteed. The only exceptions are loans made to veterans receiving VA compensation for service-connected disabilities, (or veterans whom, but for receipt of retirement pay, would be entitled to receive compensation) and unmarried surviving spouse of veterans who died in active military service or from service-connected disability regardless of whether the spouse has his or her own eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 25, 2007, at page 54512.

Affected Public: Individuals or households and Business or other for profit.

Estimated Annual Burden: 4,333 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 130,000.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23711 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0624]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0624'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0624.''

SUPPLEMENTARY INFORMATION:

Title: Obligation to Report Factors Affecting Entitlement (38 CFR 3.204(a)(1), 38 CFR 3.256(a) and 38 CFR 3.277(b)).

OMB Control Number: 2900–0624.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who applied for or receives compensation, pension or dependency and indemnity compensation benefits must report changes in their entitlement factors. Individual factors such as income, marital status, and the beneficiary's number of dependents, may affect the amount of benefit that he or she receives or affect the right to receive such benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 25, 2007, at page 54513.

Affected Public: Individuals or households.

Estimated Annual Burden: 31,017 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 372,209.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23712 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235,

Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0038'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0038.''

SUPPLEMENTARY INFORMATION:

Title: Information from Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4103 is used to collect data necessary to determine whether a child or children of a deceased veteran who served during a wartime period are eligible to receive death pension benefits when the surviving spouse's entitlement to death pension is permanently discontinued when he or she remarries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 27, 2007, at pages 54981–54982.

Affected Public: Individuals or households.

Estimated Annual Burden: 334 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23714 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0130]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0130'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0130.''

SUPPLEMENTARY INFORMATION:

Title: Status of Loan Account—Foreclosure or Other Liquidation, VA Form Letter 26–567.

OMB Control Number: 2900–0130.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 26–567 is used to obtain information from holders regarding the status of a VA-guaranteed loan account at the time of foreclosure or other liquidation action. VA uses the information to specify the amount, if any, to be bid at the foreclosure sale.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 27, 2007, at pages 54979–54980.

Affected Public: Business or other for profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23715 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0059'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0059.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Person Claiming to Have Stood in Relation of a Parent, VA Form 21–524.

OMB Control Number: 2900–0059.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–524 is used to gather information from claimants seeking service-connected death benefits as persons who stood in the relationship of the natural parent of a deceased veteran. The information is used to determine the claimant's eligibility for such benefits.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 27, 2007, at page 54980.

Affected Public: Individuals or households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 400.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23717 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0418]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether or not a firm's plant being considered for an award has been inspected by another Federal agency and whether or not an award of a contract to the firm involves a conflict of interest.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to ''OMB Control No. 2900–0418'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Sections 809.106–1, 809.504(d), and Clause 852.209–70.

OMB Control Number: 2900–0418.

Type of Review: Extension of a currently approved.

Abstract:

a. VAAR section 809.106–1 requires VA to contact a firm being considered for a contract award for bakery, dairy, or ice cream products or for laundry or dry cleaning services whether or not the firm's facility has recently been inspected by another Federal agency and, if so, which agency. The information is used to determine whether a separate inspection of the facility should be conducted by VA prior to award contract.

b. VAAR section 809.504(d) and Clause 852.209–70 requires VA to determine whether or not to award a contract to a firm that might involve or result in a conflict of interest. VA uses the information to determine whether additional contract terms and conditions are necessary to mitigate the conflict.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden:

a. VAAR section 809.106–1–30 hours.

b. VAAR section 809.504(d) and VAAR clause 852.209–7–500 hours.

Estimated Average Burden Per Respondent:

a. VAAR section 809.106–1–3 minutes.

b. VAAR section 809.504(d) and Clause 852.209–7–30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR section 809.106–1–600.

b. VAAR section 809.504(d) and Clause 852.209–7–1,000.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23724 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0622]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to consider the use of domestic foreign construction material.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to

''OMB Control No. 2900–0622'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–89, Buy American Act.

OMB Control Number: 2900–0622.

Type of Review: Extension of a currently approved collection.

Abstract: The Buy American Act requires that only domestic construction material shall be used to perform domestic Federal contracts for construction, with certain exceptions. Despite the allowable exceptions, it is VA policy not to accept foreign construction material. VAAR clause 852.236–89 advises bidders of these provisions and requires bidders who choose to submit a bid that includes foreign construction material to identify and list the price of such material. VA uses the information to determine whether to accept or not accept a bid that includes foreign construction material.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per Respondent: 30 min.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40.

Dated: November 27, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23725 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0011]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 7, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0011'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–2900–0011.''

SUPPLEMENTARY INFORMATION:

Title: Application for Reinstatement, VA Form 29–352 (Insurance Lapsed for more than 6 months) and VA Form 29–353 (Non-medical Comparative Health Statement).

OMB Control Number: 2900–0011.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–352 and 29–353 are used to apply for reinstatement of insurance and/or Total Disability Income Provision that has lapsed for more than six months. VA uses the information collected to establish the applicant's eligibility for reinstatement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 25, 2007 at pages 54512–54513.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 29–352–500 hours.

b. VA Form 29–353–375 hours.

Estimated Average Burden Per Respondent:

a. VA Form 29–352–20 minutes.

b. VA Form 29–353–15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–352–1,500.

b. VA Form 29–353–1,500.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23726 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0590]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if offerors and contractors have adequate insurance coverage prior to contract awarded.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to ''OMB Control No. 2900–0590'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, FAX 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities.

OMB Control Number: 2900–0590.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Acquisition Regulation Clauses 852.237–7 is used in solicitations and contracts for the acquisition of non-personal health care services. It requires the bidder/offeror prior to contract award to furnish evidence of insurability of the offeror and/or all healthcare providers who will perform under the contract. The information provided is used to ensure that VA will not be held liable for any negligent acts of the contractor or it's employees and that VA and VA beneficiaries are protected by adequate insurance coverage.

b. Clause 852.237–71 is used in solicitations for vehicle or aircraft services. It requires the bidder/offeror prior to contract award to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. The information is necessary to ensure that VA beneficiaries and the public are protected by adequate insurance coverage.

c. Clause 852.207–70, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firm. The clause requires the contractor to report the names of the affected Federal employees offered employment opening and the names of employees who applied for but not offered employment and the reasons for withholding offers to those employees. The information collected is used by contracting officers to monitor and ensure compliance by the contractor under the requirements of Federal Acquisition Regulation clause 52.207–3, Right of First Refusal of Employment.

Affected Public: Business or other for-profit; Individuals and households; Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden:

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance—750 hours.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance—250 hours.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities—15 hours.

Estimated Average Burden Per Respondent: 30 minutes.

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance—30 minutes.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance—30 minutes.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,030.

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance—1,500.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance—500.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities—30.

Dated: November 27, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23727 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0393]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate quotations received and to determine which quotation offers the best value in terms of price and other factors.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Acquisition Policy Division (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to ''OMB Control No. 2900–0393'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management

System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, FAX 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Part 813.

OMB Control Number: 2900–0393.

Type of Review: Extension of a currently approved collection.

Abstract: VA collects acquisition information from firms and individuals who wish to sell supplies, services, and construction or who wish to establish blanket purchase agreements (BPA) or other contractually related agreements with VA. VA uses the information collected to determine to whom to award contracts or with whom to enter into BPAs or other contractually related agreements.

Affected Public: Business or other for-profit, Individuals and households, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 20,845 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,845.

Dated: November 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23730 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0658]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments information needed to certify a lender's nominee as a VA Staff Appraisal Reviewer.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 4, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0658'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Lender Appraisal Processing Program Certification, VA Form 26–0785.

OMB Control Number: 2900–0658.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–0785 is completed by lenders to nominate employees for approval as approved Staff Appraisal Reviewer (SAR). Once approved, SAR's will have the authority to review real estate appraisals and to issue notices of values on behalf of VA. VA uses the information collected to perform oversight of work delegated to lenders responsible for making guaranteed VA-backed loans.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: November 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23732 Filed 12–5–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 6, 2007

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Interim Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2006–0037]

RIN 0584–AD77

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule revises regulations governing the WIC food packages to align the WIC food packages with the Dietary Guidelines for Americans (DGA) [1] and current infant feeding practice guidelines of the American Academy of Pediatrics, better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, and provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences.

DATES: *Effective Date:* This rule is effective February 4, 2008.

Implementation Date: State agencies must implement the provisions of this rule no later than August 5, 2009.

Comment Date: To be considered, comments on this interim rule must be postmarked on or before February 1, 2010.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Food and Nutrition Service,'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select FNS–2006–0037 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

Comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.* Information regarding the interim rule will be available on the FNS Web site at *http://www.fns.usda.gov/wic.* A regulatory impact analysis has been prepared for this rule. It follows this regulation as an Appendix.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, or *Debbie.Whitford@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

This interim rule implements the first comprehensive revisions to the WIC food packages since 1980. These revised food packages were developed to better reflect current nutrition science and dietary recommendations than do current food packages, within the parameters of current program costs.

II. Background

The WIC food packages provide supplemental foods designed to address the nutritional needs of low-income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to five years of age who are at nutritional risk. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. WIC is a unique nutrition assistance program in that it also serves as an adjunct to good health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of Program participants. WIC was never intended to be a primary source of food, nor of general food assistance. Rather, WIC food benefits are scientifically-based and intended to address the supplemental nutritional needs of a specific population—low income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to five years of age who are at nutritional risk. In addition to WIC, the Food and Nutrition Service (FNS) administers a variety of other complementary nutrition assistance programs that work together to provide a more complete diet to low-income persons. Low-income families can, and frequently do, receive benefits from more than one of these programs. The largest of these programs, the Food Stamp Program, provides general food assistance intended to increase the food buying power of low-income households.

The ability of the WIC food packages to reinforce nutrition education messages provided to participants is critical to affecting the dietary quality and habits of infants, children and mothers served by WIC. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods that, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs. The intent is to help participants continue healthful dietary practices after leaving the Program.

Since the creation of the WIC Program in the 1970s, and the last major revision of the WIC food packages in the early 1980's, much has been learned about the nutritional needs of Americans, including WIC's target population of pregnant and postpartum women, infants, and preschool aged children. In recent years the ability of the WIC Program to address the supplemental nutritional needs of WIC participants through its food packages and nutrition education has received growing attention. Significant interest in updating the food packages based on new information about the needs of low-income, culturally diverse women, infants, and children has been voiced by WIC Program administrators, the medical and scientific communities, advocacy groups, and Congress.

III. General Summary of Comments Received on the Proposed Rule To Revise the WIC Food Packages

The Proposed Rule to revise regulations pertaining to the supplemental foods provided through the WIC Program was published in the **Federal Register** on August 7, 2006 (71 FR 44784), with a 90-day comment period. The proposed rule largely reflected recommendations made by the National Academies' Institute of Medicine (IOM) in its Report ''WIC Food Packages—Time for a Change,'' [2] with modifications found necessary by FNS to ensure cost neutrality.

A total of 46,502 comment letters were received on the Proposed Rule; of those, 23,908 were form letters. A total of 38,257 letters were received from program participants; 18,080 of those were form letters. The remaining comment letters were submitted from a

variety of sources, including WIC State and local agencies and Indian Tribal Organizations, the National WIC Association (NWA), professional organizations and associations, advocacy groups, healthcare professionals (including universities), members of Congress, the food industry, vendors, farmers, and private citizens.

In general, the proposed changes to the WIC food packages garnered broad support from public commenters. A total of 21,042 commenters (8,293 of these form letters) made explicit statements regarding the merits of the proposed rule as a whole. Of those, 20,438 (8,292 of which were form letters) expressed support for the majority of the proposed revisions. A total of 604 commenters (1 of these a form letter) disagreed with the majority of the proposed rule provisions—these letters were primarily from participants who did not want to see any changes to the current WIC food packages. FNS considered all comments without regard to whether they were provided by a single commenter or repeated by many. Importance was given to the substance or content of the comment, rather than the number of times a comment was submitted.

IV. Discussion of the Proposed Provisions

The following is a discussion of the major provisions set forth in the proposed rule, a brief summary of the comments received that addressed these issues, and FNS' rationale for either modifying each section in the interim rule, or retaining its provisions as initially proposed. Provisions not addressed in the preamble to this interim rule did not receive significant or substantial public comments and are retained in this interim rule as proposed.

This preamble articulates the basis and purpose behind significant changes from the August 7, 2006, proposal. The reasons supporting provisions of the proposed regulations were carefully examined in light of the comments to determine the continued applicability of the justifications. Unless otherwise stated, or unless inconsistent with the interim rule or this preamble, the rationales contained in the preamble to the proposed regulations should be regarded as a basis for the interim rule. Therefore, a thorough understanding of the rationales for the interim regulations may require reference to the preamble of the August 7, 2006 proposal (71 FR 44784).

A. Definitions

1. *Participation.* FNS proposed to revise the definition for WIC ''participation'' to include the number of breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives the supplemental foods or food instruments. The definition means, therefore, that a partially breastfeeding woman who requests, after the sixth month postpartum, more than the maximum amount of formula allowed for a partially breastfed infant would no longer receive a food package but would continue to count as a WIC participant and receive other Program benefits and nutrition services (nutrition education, including breastfeeding promotion and support, and referrals to health and social services.) Thirty-two commenters (15 form letters) were opposed to not providing a food package to partially breastfeeding women who request, after the sixth month postpartum, more formula than the maximum.

The IOM recommended that a partially breastfeeding woman who requests, after the sixth month postpartum, more than the maximum amount of formula for a partially breastfed infant, no longer be certified for the WIC Program. However, FNS determined that this approach is incongruous with the definition of breastfeeding in WIC regulations at 7 CFR 246.2—the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once per day. In WIC, this definition is used to determine Program eligibility, and allows all breastfeeding women, regardless of feeding pattern, to participate in the WIC Program, be counted as a breastfeeding woman, and receive supplemental foods, breastfeeding promotion and support, and referrals to health care. The definition recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits that would otherwise not be provided to an infant. Rather than adopt IOM's recommendation in its entirety, FNS proposed to revise the definition for WIC ''participation'' to include breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives supplemental food or food instruments. Counting these women, although they are not receiving a food package, is consistent with the current practice of counting the infants of exclusively breastfeeding women. Therefore, a partially breastfeeding woman who requests, after the sixth month postpartum, more than the maximum amount of formula allowed for a partially breastfed infant would no longer receive a food package but would continue to count as a WIC participant and receive other Program benefits (nutrition education, including breastfeeding promotion and support, and referrals to health and social services). This would serve to meet the intent of IOM's recommendations within the context of WIC regulations.

As recommended by some commenters, FNS clarifies that breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives the supplemental foods or food instruments continue to be eligible to receive nutrition services, and breast pumps are a part of nutrition services. With this clarification, the definition of participation is retained in this interim rule as proposed at 7 CFR 246.2.

2. *WIC-eligible medical foods.* FNS proposed to revise the definition for ''WIC-eligible medical foods'' to clarify that medical foods are designed for children 12 months and older and adults and that WIC-eligible medical foods are not conventional foods, drugs, flavorings or enzymes. A few commenters disagreed with the proposed definition for WIC-eligible medical foods stating that the definition as proposed would exclude infants from receiving certain medical foods that are appropriate for them such as modular formulas that are not nutritionally complete but add specific nutrients such as protein, fat, and carbohydrate. FNS acknowledges that certain medical foods exist that are appropriate for use by infants and that medically fragile infants should be included as a participant category in the WIC-eligible medical food definition. Several other commenters believe that FNS should rely on Food and Drug Administration (FDA) expertise for the definition of medical foods since FDA is the regulatory authority for medical foods. FNS acknowledges FDA's role in the regulation of medical foods. However, specific requirements for the safety or appropriate use of medical foods have not yet been established by FDA.

FNS agrees with commenter concerns that the proposed definition for WIC-eligible medical foods excludes infants as a participant category. Therefore, the proposed definition for WIC-eligible medical foods is revised in this interim rule to include infants as a participant category.

B. General Provisions That Affect All WIC Food Packages

1. Food Lists

The proposed rule would have continued to require State agencies to identify brands and package sizes that are acceptable for use in their States from among those authorized and to provide to local agencies a list of acceptable foods and their maximum monthly allowances in accordance with WIC requirements. This provision is retained in this interim rule at 7 CFR 246.10(b)(2)(i). A conforming amendment in this interim rule at 7 CFR 246.4 clarifies that a copy of the food list must be included in the State Plan.

2. Nutrition Tailoring

Current FNS policy allows both categorical and individual nutrition tailoring of WIC food packages. Categorical nutrition tailoring is the process of modifying the WIC food packages for participant groups or subgroups with similar supplemental nutrition needs, based on scientific nutrition rationale and State established policies. The proposed rule would have prohibited categorical nutrition tailoring, but continue to allow individual nutrition tailoring based on the Competent Professional Authority's assessment of a participant's supplemental nutrition needs.

A total of 528 commenters (of these, 505 were form letters) agreed with the proposal to eliminate State authority to categorically tailor food packages, stating that the careful balance achieved by the IOM's recommendations to revise the WIC food packages should be maintained. In contrast, 187 commenters (of these, 151 were form letters) were opposed to the provision, stating that States need the flexibility to propose modifications to food packages that respond to rapid changes in food industry, science, demographics, and other factors.

As discussed at length in the preamble to the proposed rule, the revised food packages have the potential to address current nutrient inadequacies and excesses; discrepancies between dietary intake and dietary guidance; and current and future health-related problems in WIC's target population. The IOM was also charged with considering the cultural needs of WIC participants and its recommendations for revisions to the WIC food packages, and the proposed rule, reflect those considerations. The IOM had the resources and capacity to conduct an independent, rigorous scientific review of the nutritional needs of WIC participants in each category prior to recommending the quantities and types of WIC foods to address those needs in its Report.[2] Because the IOM based the revisions to the WIC food packages on current nutrition science, FNS proposed that State agencies would no longer be authorized to categorically tailor food packages.

FNS believes that State agencies will best be able to meet the nutritional needs of each WIC participant through nutrition assessment and individual tailoring of the food package. Therefore, the provision to disallow State agency proposals to categorically tailor WIC food packages is retained in this interim rule at 7 CFR 246.10(c). FNS clarifies that, in addition to having the authority to individually tailor food packages, State agencies continue to have the authority to make adjustments to WIC foods for administrative convenience and to control costs. Such adjustments may involve packaging methods, container sizes, brands, types and physical forms of WIC foods.

3. Cultural Food Package Proposals

A total of 174 commenters (of these, 149 were form letters) were opposed to FNS' proposal to no longer consider WIC State agency requests for cultural food substitutions. Commenters cited the need for State agencies to have the flexibility to keep pace with demographic changes in the WIC population.

FNS believes that the increased variety and choice in the supplemental foods in this interim rule provide State agencies expanded flexibility in prescribing culturally appropriate packages for diverse groups. Section 203(c) of Public Law 108–265 amended Section 17(c)(2) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786), by requiring the Secretary to conduct, as often as necessary, a scientific review of supplemental foods available under the program and to amend the foods, as needed, to reflect nutrition science, public health concerns, and cultural eating patterns. As such, future reviews of the WIC food packages by FNS will be used to determine the need for additional cultural accommodations. However, in response to requests by commenters to allow State agencies the flexibility to meet unanticipated cultural needs of participants, a new 7 CFR 246.10(i) has been added to this interim rule that allows State agencies to submit to FNS a plan for substitution of food(s) to allow for different cultural eating patterns. The criteria for submitting plans for substitutions for different cultural eating patterns and the criteria FNS will use to evaluate such plans are the same as those under current WIC regulations at 7 CFR 246.10(e).

4. Medical Documentation and Supervision Requirements

Under the proposed rule, medical documentation would have been required for certain milk alternatives for children and women and for any supplemental foods authorized in proposed Food Package III. Under the proposed rule, medical documentation would continue to be required for any contract brand infant formula that does not meet the requirements of an infant formula as specified in Table 4 of 7 CFR 246.10(e)(12) of the proposed rule, any non-contract brand infant formula, any exempt infant formula, or any WIC-eligible medical food.

Under current WIC regulations, the technical requirements for medical documentation include:

- Brand name of the WIC formula prescribed;
- Medical diagnosis warranting the WIC formula;
- Length of time the prescribed WIC formula is medically required by the participant; and
- Signature (or name, if the initial documentation was received by telephone) of the requesting health care provider.

Under the proposed rule, additional technical requirements would have been added as follows:

- Contact information for the participant's healthcare provider making the medical determination;
- Date of medical determination;
- Name of specific supplemental food(s) to be prescribed;
- Amount prescribed per day of WIC formula and/or supplemental foods;
- Qualifying condition that warrants the issuance of the specific supplemental food(s); and
- Length of time the specific supplemental food(s) is medically required.

A total of 2,107 comment letters (1,945 of these were form letters) opposed the proposed medical documentation, primarily the documentation for children to receive soy-based beverage. Commenter's stated that the medical documentation requirement for soy-based beverage for children would create barriers to services and undermine FNS' efforts to provide foods that meet the cultural needs of participants. A small number of comments received from WIC staff primarily at the local level expressed concern that requiring medical documentation for the additional supplemental foods allowed in proposed Food Package III and requiring

a prescribed amount per day is burdensome to participants, the medical community and WIC agencies.

FNS understands the potential administrative impact of requiring medical documentation for the provision of supplemental foods in Food Package III. However, these medical documentation requirements were proposed to ensure that the participant's healthcare provider, licensed in the State to write prescriptions, has determined that the supplemental foods are not medically contraindicated by the participant's qualifying condition. Participants that receive Food Package III are medically fragile and should be under the care of a healthcare professional for the purpose of close medical supervision essential for the participant's overall dietary management. Participants that receive Food Package III have qualifying medical conditions that preclude or restrict their use of conventional foods. Requiring medical documentation to include the additional supplemental foods allowed in proposed Food Package III and requiring an amount prescribed per day will ensure that the participant's health care provider is aware that WIC is providing supplemental foods that the health care provider has determined are not medically contraindicated by the participant's qualifying medical condition. Requiring the health care provider to designate an amount of WIC formula and the WIC supplemental foods allowed in the participant's diet will help the Certified Professional Authority (CPA) in designing nutrition education and a food package prescription that is appropriate to the participant's medical needs.

FNS acknowledges that some additional administrative tasks will occur because of medical documentation requirements for dairy alternatives. However, requiring medical documentation for soy-based beverage for children ensures that a child's health care provider is aware that the child may be at nutritional risk when milk is replaced by other foods. The DGA [1] stress the importance of milk consumption in the development of bone mass for children. The IOM noted that while soy products may be an appropriate choice for children who cannot consume milk, soy should not be made available to satisfy participant preference in the absence of medical need. Therefore, the proposed provisions for medical documentation for certain milk alternatives for children and women and for any supplemental foods authorized in proposed Food Package III are retained in this interim rule at 7 CFR 246.10(d). Proposed provisions related to revised medical documentation requirements that are not addressed in this preamble did not receive significant or substantial public comments and are retained in this interim rule as proposed.

5. Organic Foods

A number of commenters asked FNS to allow organic products within the authorized categories of foods in the WIC food packages. FNS points out that some organic forms of WIC-eligible foods meet the nutritional requirements set forth in current WIC regulations and are therefore authorized; this interim rule continues to authorize organic forms of foods that meet minimum nutrition requirements described in Table 4 of 7 CFR 246.10(e)(12). However, WIC State agencies are responsible for determining the brands and types of foods to authorize on their State WIC food lists. Some State agencies may allow organic foods on their foods lists, but this will vary by State. The decision may be influenced by a number of factors such as cost, product distribution within a State, and WIC participant acceptance.

C. Supplemental Foods and Food Packages

Note: In the interest of clarity, specific food package issues are discussed according to food item rather than food package and then the food package categories are discussed. The order of some of the topics in this section is modified from the proposed rule for the purposes of discussion.

1. Fruits and Vegetables in Food Packages III Through VII

The addition of fruits and vegetables to the WIC food packages was the most welcomed provision of the proposed rule across all commenter categories. Of the total of 40,026 comment letters that addressed fruits and vegetables, 39,961 (22,935 of these form letters) were favorable. The majority of the few opposing comments were from participants who did not want to see any changes to the current WIC food packages.

a. Maximum Monthly Allowances

The IOM recommended that fruits and vegetables be provided at levels of $10 per month for women and $8 per month for children. To achieve cost neutrality, the proposed rule would have established the value of fruit and vegetable vouchers at levels of $8 per month for women and $6 per month for children. A total of 3,166 commenters (2,940 of these form letters) asked FNS to increase the cash-value vouchers to the level recommended by the IOM so that participants could receive one additional serving of fruits and vegetables per day. Commenters cited (1) the important benefits of fruits and vegetables in decreasing high blood pressure, heart disease, obesity, and cancer; (2) the generally low consumption of fruits and vegetables among WIC participants; and (3) the role that WIC can play in helping participants meet the DGA[1] for fruit and vegetable intake. Commenters urged FNS to seek additional funds to provide the cash-value vouchers at the level recommended by IOM.

A total of 692 commenters (562 of these form letters) asked FNS to consider, at a minimum, increasing the cash-value fruit and vegetable voucher to $10 for fully breastfeeding women to further enhance the attractiveness of this package and provide an additional incentive for women to breastfeed.

While FNS is in full agreement with the IOM and commenters regarding the benefits of fruits and vegetables for WIC participants, it is important that revisions to the WIC food packages be cost neutral to protect the program's ability to serve the greatest number of eligible women, infants, and children. For fruits and vegetables, the IOM's intent was to move WIC participants towards some amount of increased fruit and vegetable consumption and, at the same time, reinforce the role of the WIC food packages in nutrition education. The proposed $8 and $6 cash-value fruit and vegetable voucher fulfilled this intent while ensuring cost neutrality. Therefore, the provision will be retained in this interim rule as proposed for children and women in Food Packages III–VI in Table 2 of 7 CFR 246.10(e)(10) and Table 3 of 7 CFR 246.10(e)(11). However, FNS has considered the benefits of increasing the value of the vouchers for fully breastfeeding women and has determined that a $2 increase can be accomplished while maintaining cost neutrality. This provision is therefore revised in the interim rule in Table 2 of 7 CFR 246.10(e)(10) and Table 3 of 7 CFR 246.10(e)(11) to reflect a cash-value voucher of $10 for fully breastfeeding women in Food Packages III and VII.

Thirty commenters (23 of which were form letters) preferred that a set amount of fruits and vegetables be authorized per month, e.g., 3 pounds for a child, in lieu of a cash-value voucher, for administrative ease and to control costs. FNS disagrees with this approach. A voucher, rather than a more narrowly defined fruit and vegetable option, offers flexibility, ensures participant access, and minimizes costs of

compliance by administrative agencies and WIC-approved vendors. Allowing participants to choose a wide variety of fruits or vegetables is intended to increase consumption by accommodating individual and culturally-based preferences.

(1) *State agency responsibility to make available to participants at least two fruits and two vegetables from the category of fruits and vegetables in each authorized food package.* FNS proposed that State agencies be required to make available at least two fruits and two vegetables to participants in Food Packages III–VII. A total of 487 commenters (of which 418 were form letters) opposed the provision, believing that it undermines the IOM's recommendation to allow participants a wide variety of choices within the authorized fruit and vegetable options by authorizing State agencies to limit the number and variety of fruits and vegetables.

FNS' intention with this proposed provision was to ensure participant choice among the fruit and vegetables authorized by the State agency by expanding current WIC regulations that require State agencies to make available at least one food from each group in each food package. As described in the preamble to the proposed rule, it was FNS' expectation that more than two varieties each of fruits and vegetables would be authorized by State agencies. Therefore, the proposed provision is clarified in the interim rule at 7 CFR 246.10(b)(2)(ii)(B) to ensure its original intent to require State agencies to allow participants to use their cash value vouchers to purchase any WIC-eligible fruits and vegetables from among those authorized in Table 4 of 7 CFR 246.10(e)(12). This allows participants a wide variety of choices within the authorized fruit and vegetable options without restriction, in keeping with IOM recommendations. Further, the proposed provision at 7 CFR 246.10(b)(1)(i) is revised in this interim rule to disallow further restrictions on eligible fruits and vegetables.

(2) *Minimum vendor stocking requirement.* Similarly, at 7 CFR 246.12(g)(3)(i), FNS proposed that WIC authorized vendors carry a minimum of two varieties of fruits and vegetables to ensure participant choice at the retail level, while acknowledging that certain smaller vendors may not be able to stock as wide a variety of fruits and vegetables as larger vendors. A total of 472 commenters (418 form letters) disagreed with this provision, stating that setting a minimum vendor stocking requirement of two fruits and vegetables undermines the IOM recommendation to allow participants a wide variety of choices. Of these commenters, 269 (221 form letters) stated that State agencies should be allowed to specify minimum stocking requirements.

FNS points out that the proposed provision authorizes State agencies to establish different minimums for different vendor peer groups, thus allowing State agencies the flexibility to work with vendors to provide the maximum number and variety of fruits and vegetables that are locally accessible, culturally appropriate and affordable. However, it is required that all authorized vendors must stock at least two varieties of fruits, two varieties of vegetables, and one whole grain cereal authorized by the State agency. Therefore, the provision at 7 CFR 246.12(g)(3)(i) is retained in the interim rule as proposed; however, a technical oversight in the proposed rule has been corrected by clarifying that authorized vendors must stock at least two different varieties of fruits and two different varieties of vegetables.

b. Inflation Adjustment

FNS proposed an option to increase the value of the cash-value fruit and vegetable vouchers by a whole dollar increment. A total of 124 commenters (75 of which were form letters) asked that FNS commit to a yearly inflation adjustment. FNS agrees with commenter that it is important to maintain the value of the vouchers over time. Cash-value vouchers will be set at $6 for children and $8 for pregnant and partially breastfeeding and $10 for fully breastfeeding women in the year in which the food package revisions take effect. This interim rule adds a provision at 7 CFR 246.16(j) to adjust the maximum value of the vouchers in whole dollar increments using the Bureau of Labor Statistics' Consumer Price Index for Fresh Fruits and Vegetables.

c. Minimal Restrictions on Authorized Fresh Fruits and Vegetables

To improve the consumption of fresh fruits and vegetables and to appeal to participants of different cultural backgrounds, the proposed rule would have authorized a wide variety of choices within the authorized fruit and vegetable options. To ensure nutritional integrity and cost neutrality, some minimal restrictions were proposed, e.g., no herbs or spices, edible blossoms of flowers, fruit leathers and fruit roll-ups. The majority of commenters favored the provision to authorize a wide variety of fruits and vegetables; however, 9 commenters (1 of which was a form letter) stated the opinion that the fruit and vegetable selections should be limited to sources of priority nutrients.

As stated in the Regulatory Impact Analysis that was published in the **Federal Register** as an appendix to the proposed rule, FNS considered alternatives to the proposed provision, including authorizing a more restrictive dark green and orange vegetable provision. This alternative was rejected because FNS believes that WIC food packages that reflect the IOM recommendations as closely as possible within the constraints of cost neutrality best reflect current scientific consensus on how to meet the supplemental dietary needs of WIC participants. The IOM chose not to emphasize the dark green and orange vegetable groups that tend to offer the highest concentrations of certain priority nutrients and instead recommended a fruit and vegetable option with few restrictions. Nutrition education offered by local WIC agencies will remain the primary method of encouraging participants to incorporate these high nutrient fruits and vegetables into their diets; under this interim rule participants remain largely free to choose the fruits and vegetables that they find most appealing.

Thirteen commenters (2 of which were form letters) believe that FNS should simplify the proposed minimal restrictions to ease interpretation and implementation for participants, vendors, and staff. A total of 128 commenters (125 of which were form letters) asked FNS to allow State agencies flexibility to promote produce selections that come in standard packages with Universal Product Codes to minimize burden. As stated above, the nutrition education provided to participants is intended not only to encourage participant choice in the selection of fruits and vegetables, but also to provide information on shopping tips to obtain the maximum value of the voucher.

FNS is aware that State agencies will need to provide training and technical assistance to participants and vendors in implementing the food package changes. State agencies generally update their food lists on a biennial basis which requires training for both participants and vendors. Recognizing the extensive changes that will be necessary as a result of this rule, FNS will assist State agencies on vendor training, participant education, and other implementation issues. FNS also encourages State agencies to work with their vendor associations as they develop their new State procedures, particularly in regard to the cash-value fruit/vegetable voucher.

d. Disallowance of White Potatoes

Under the proposed rule, white potatoes would have been excluded from authorization in the WIC food packages. A total of 324 commenters (of these 291 were form letters) opposed the restriction of white potatoes. Twenty-four commenters stated that white potatoes should be included in the WIC food packages because they are versatile, economical and contain key nutrients. Thirteen commenters (1 form letter) from WIC State and local agencies stated that the exclusion of white potatoes would be hard to administer.

The restriction of white potatoes, as recommended by the IOM, is based on the amounts suggested in the DGA[1] for consumption of starchy vegetables; food intake data indicating that consumption of starchy vegetables meets or exceeds these suggested amounts; and food intake data showing that white potatoes are the most widely used vegetable. Therefore, this provision is retained in the interim rule as proposed in Table 4 of 7 CFR 246.10(e)(12).

e. Implementation of Fruit and Vegetable Options

(1) Small dollar denomination of fruit and vegetable food instruments. In the preamble to the proposed rule, FNS encouraged State agencies to issue small denomination, i.e., $2, cash-value fruit and vegetable food instruments. The small denominations were encouraged so the participant could obtain small amounts of fresh produce at various times during the month, lessening the chance of food spoilage and waste. A total of 200 commenters (of which 133 were form letters) disagreed with FNS' recommendation to provide the fruit and vegetable value in small denominations. The majority of those in opposition were WIC State and local agencies who stated that they should be allowed to determine, in partnership with vendors, the most cost effective method to provide the fruit and vegetable food instrument. FNS clarifies that although State agencies are encouraged to provide the cash-value food instrument in small denominations for the reasons cited above and in the proposed rule, State agencies will determine the dollar denomination that is most beneficial to participants and cost effective given the State agency's infrastructure and environment.

(2) Paying cash with the fruit/vegetable voucher. Nineteen commenters asked that participants be allowed to pay the difference when the purchase exceeds the value of the fruit/vegetable voucher. Under current rules at 7 CFR 246.12(c), State agencies must ensure that participants receive their authorized supplemental foods free of charge. Such a restriction is necessary with the ''traditional'' WIC food instrument which reflects a specific quantity of foods that a participant must receive. In contrast, the fruit/vegetable cash-value voucher reflects a maximum dollar allotment for the participant. Because it may be difficult to accurately estimate the exact purchase price of the fruit and vegetable selections, particularly when fresh and canned or frozen items are combined in one purchase, FNS concurs with commenters that participants should be allowed to pay the difference when the purchase of allowable fruits and vegetables exceeds the value of the fruit/vegetable voucher. This option would promote increased consumption of fruits and vegetables because participants would be more likely to utilize the full cash value, rather than partially redeem the voucher for fear of exceeding its cash value. The rule prohibits giving cash or credit to the participant for any unused portion of the fruit/vegetable voucher.

(3) Benefit delivery. While most of the food package changes will be administered via existing State benefit delivery systems, the cash-value fruit/vegetable voucher will require changes to WIC benefit delivery systems to accommodate a more open-ended benefit determined by a cash value rather than a fixed quantity of a specific food item. State agencies and vendors must modify operations and procedures to issue, transact, and process the redemption of a cash value benefit. As described in the proposed rule, options for benefit delivery include Electronic Benefit Transfer (EBT) and farmers' markets.

(4) Farmers' markets. A total of 936 commenters (of which 170 were form letters) agreed with the provision to allow the fruit/vegetable cash-value voucher to be redeemed by farmers at farmers' markets. Eleven commenters disagreed with the provision. Many commenters suggested that FNS ''Do no harm to the WIC Farmers' Market Nutrition Program (FMNP),'' and that funding for the FMNP not be reduced or procedures established that would adversely affect its operation or effectiveness.

FNS would like to clarify that the regulatory requirements for the FMNP are unchanged by this interim rule. Many commenters incorrectly believed that the proposal would have allowed FMNP coupons to be redeemed at authorized WIC vendors. This is not true; the proposal would have allowed the WIC fruit/vegetable cash-value voucher to be redeemed at farmers' markets.

Of the commenters supporting the provision to allow farmers at farmers' markets to accept the fruit/vegetable cash-value voucher, clarification was requested on several issues—would State agencies be required to authorize farmers at farmers' markets if they do not currently administer the FMNP; can farmers at farmers' markets be treated as seasonal vendors and only be allowed to accept the fruit/vegetable voucher; can the State agency enter into one contract with the farmer that includes requirements for both WIC and the FMNP; and, can farmers' markets be excluded from the WIC vendor monitoring and audit requirements?

In response to commenter questions, this interim rule will not require State agencies to authorize farmers to accept the WIC fruit/vegetable voucher. If a State agency chooses to authorize farmers at farmers' markets, it may modify its standard vendor agreement to address the unique circumstances of farmers' markets, as allowed by 7 CFR 246.12(h)(2). For example, the farmer's market agreement may only allow the farmer to accept the fruit/vegetable cash-value voucher. In addition, the State agency can choose to enter into one agreement with the farmer that includes the requirements for both the WIC and WIC Farmers' Market Nutrition Programs. Further, farmers would be excluded from the vendor cost containment requirements. The farmers may also be excluded from the WIC monitoring requirements provided that they are included in the sample of farmers upon which the FMNP monitoring requirement is drawn. A new 7 CFR 246.12(v) has been added that specifies the requirements regarding the authorization of farmers at farmers' markets. The rule also adds definitions for cash-value voucher and farmer (the same as that used in the FMNP), and modifies the food instrument requirements to identify the provisions that do not apply to the cash-value voucher. As a result of the addition of the definitions of farmer and cash-value voucher, we have made conforming amendments to the definitions of ''compliance buy,'' ''employee fraud and abuse,'' ''participants,'' ''participant violations,'' ''proxy,'' and ''nutrition services and administration'' to include these new terms as appropriate.

(5) Electronic Benefit Transfer (EBT). While the majority of State WIC agencies deliver benefits via paper checks or vouchers, 5 States are testing the feasibility of EBT and an additional State has adopted EBT statewide.

Although it will take a number of years to implement WIC EBT fully in all States, the fruit and vegetable benefit may provide opportunities for alternative forms of benefit delivery and allow some States to move toward limited electronic benefit processing prior to the implementation of EBT for all WIC purchases. In an effort to explore the range of possibilities for using existing commercial infrastructure to administer the fruit and vegetable benefit including WIC EBT smartcard and online solutions, commercial debit cards, and other technologies, FNS commissioned a study by the State Information Technology Consortium (SITC). Although the report is not yet final, preliminary findings indicate that for redemption of the fruit/vegetable benefit, paper fruit and vegetable cash-value checks or vouchers appear to be the least costly and easiest to implement by State agencies and food vendors within a 12-month time period. The accountability for purchasing authorized fruits and vegetables remains the same as other food instruments—subject to training store clerks regarding eligible food items and State compliance monitoring.

Debit type cards (EBT or credit/debit) with a magnetic strip offer potentially cost-effective solutions that leverage the widely available card payment infrastructure in the United States. Magnetic strip cards in volume can be purchased for less than 25 cents each. There are, for instance, many large and smaller food vendors that already accept credit card payments or accept EBT cards using a four digit Personal Identification Number (PIN). These vendors include most authorized WIC vendors. Focus groups with participants were favorable to this type of alternative because of lessened stigma while shopping and the ability to purchase foods incrementally rather than forfeiting some items with a paper instrument. Technical standards would need to be modified to enable card use only within authorized WIC vendor locations and there may be a need to define standards to facilitate retailer and/or EBT contractor changes to existing store equipment and software. The accountability for purchasing eligible foods only is similar to paper food instruments.

WIC EBT solutions, on-line using magnetic-strip cards or off-line using smart cards, offer the greatest potential to ensure that only eligible fruits and vegetables are purchased with WIC cash-value vouchers, but it would be more costly for all stakeholders. These solutions would match each item scanned to a State list of authorized UPC's and/or Price Look-Up codes or PLUs. These solutions require additional investment by State agencies in cards, equipment, and maintenance of a much larger number of product Universal Product Codes and Price Look-Up (PLUs) codes for fresh produce. The fresh produce industry has taken steps to institute greater standardization of PLUs; however, the seasonal and local produce suppliers do not always have means to use PLUs effectively. The draft SITC report suggests that pilot design and development will be necessary to identify cost effective solutions that can be widely adopted by State agencies and authorized vendors.

2. Peanut Butter and Legumes

The proposed rule would have added 18 ounces of peanut butter in Food Package V to improve the intake of several nutrients in the diets of pregnant and breastfeeding women. The proposed rule would also add legumes (dried beans/peas or peanut butter) in Food Package VI for postpartum women. Canned beans were proposed as an optional substitute for dry beans in Food Packages III–VII. Of the 3,091 comment letters that addressed these provisions, 3,085 commenters (21 form letters)—a large majority of whom were participants—were in favor of the proposed changes.

Six commenters asked that FNS eliminate peanut butter in the food packages for children because of concerns about peanut allergies. The IOM advised that children should avoid eating peanut butter from a spoon for safety reasons until age 3, but recommended that peanut butter continue to be offered in the WIC food packages for young children from 1 to 5 years of age. IOM has advised FNS that assessing for allergies and tailoring a young child's food package based on such assessment, as is current practice in WIC, is appropriate.

Therefore, the proposed peanut butter and legume provisions are retained in this interim rule as proposed.

3. Milk and Milk Alternatives

a. Maximum Monthly Milk Allowances

The proposed rule would have decreased the maximum monthly allowances for milk in all food packages—for children and postpartum women, from 24 quarts to 16 quarts; for pregnant and partially breastfeeding women, from 28 to 22 quarts; and for fully breastfeeding women, from 28 quarts to 24 quarts of milk. Reducing the amount of milk provided through WIC is consistent with recommended limits on saturated fat, total fat, and cholesterol consumption put forth in the DGA,[1] better aligns the amount of milk provided by WIC with the amounts recommended by the DGA[1] and is consistent with the supplemental nature of the WIC Program.

The majority of non-participant commenters were in favor of the proposed reductions in milk. A total of 2,088 non-participant commenters (1,874 of which were form letters) were supportive of the reductions, while 66 commenters were opposed. Commenters opposing the reductions cited the contribution of milk to intakes of priority nutrients for WIC participants, e.g., calcium, Vitamin A, and potassium. Seventeen commenters stated that the food package for postpartum women should be increased to the levels provided to pregnant and partially breastfeeding women. Six commenters urged FNS to maintain milk at current levels and increase funding for other proposed food package provisions.

Comment letters from program participants reflected disappointment with the reductions in milk. A total of 1,831 comment letters were received from program participants who opposed the reductions; 225 participants wrote in favor of the proposed reductions.

FNS believes that the IOM set forth a series of science-based recommendations that, taken together, balance the various supplemental nutritional needs of participants. According to the IOM, amounts of milk provided by the WIC food packages need not exceed amounts recommended by the DGA.[1] The proposed dairy levels for children (2 cups/day) and pregnant and breastfeeding women (3 cups/day) provide at least 100 percent of the servings recommended by the DGA.[1] The level for non-breastfeeding postpartum women is at least ⅔ of the amount set forth by the DGA.[1] The proposed maximum monthly allowance of milk allows a more balanced food package to provide the various high priority nutrients within cost constraints. Therefore, the proposed maximum allowances for milk are retained in this interim rule in Table 2 of 7 CFR 246.10(e)(10) and Table 3 of 7 CFR 246.10(e)(11).

b. Low-Fat Milk

Under the proposed rule, only whole milk (not less than 3.25% milk fat) would have been authorized for children less than 2 years of age. For children two years of age and older and women, the proposed rule would have authorized only milk with no more than 2% milk fat to be consistent with current recommendations of the DGA

2005 to limit saturated fat and dietary cholesterol intake. A total of 3,058 commenters (2,663 of which were form letters) agreed with the provisions as written; 222 (10 of which were form letters) were opposed. One hundred seventy of those opposed were program participants. A total of 1,379 commenters (1,338 of which were form letters) stated that the fat content of milk for children and women should be reduced even further—to no more than 1% of milk fat.

Seventy-eight commenters (23 of which were form letters) asked FNS to allow the CPA the authority to prescribe the type of milk (whole milk or low fat milk) to participants, regardless of age or category, if medically necessary for such reasons as failure to thrive, underweight or overweight. FNS' position is that participants who have medical conditions that lead to a diagnosis of failure to thrive will likely be issued Food Package III. Therefore, to address commenters' concerns, this interim rule will authorize whole milk for children 1 through 4 years of age and women in Food Package III, with medical documentation. As proposed, only milk with no more than 2% milk fat is authorized for children 2 years of age and older and women in Food Packages IV–VII. For these participants, nutrition education directed towards appropriate foods and food amounts should be provided for underweight or overweight participants. Nutrition education and individual tailoring of the food package within authorized parameters remain the most effective tools for WIC staff to use to help participants make appropriate choices based on their specific needs.

c. Lactose Free Milk

Under the proposed rule, as long as a milk conforms to the FDA standard of identity for milk as defined by 21 CFR Part 131 and meets WIC Federal requirements, it would be an authorized milk in Food Packages IV, V, VI, and VII. Although not specified in the proposed rule, authorized milks that conform to the FDA standard of identity include, but are not limited to, calcium-fortified, lactose-reduced and lactose-free, acidified, and ultra-high temperature (UHT) milks. FNS clarifies that these products are authorized, and that lactose-free or lactose-reduced dairy products should be offered before non-dairy milk alternatives to those participants with lactose intolerance who cannot drink milk. FNS also clarifies that medical documentation is not required for participants to receive lactose-reduced and lactose-free milk.

d. Authorized Substitutions for Milk (Cheese, Tofu, Soy-Based Beverage)

(1) Cheese. The proposed rule would have reduced the amount of cheese that may be substituted for milk to one pound per month for children and pregnant, postpartum and partially breastfeeding women, and two pounds for fully breastfeeding women. Reducing the amount of cheese that may be substituted for milk will reduce saturated fat and total fat intake by children age two and older and women consistent with the DGA[(1)] recommendations. Amounts of cheese that exceed the maximum substitution amounts may be authorized with medical documentation in cases of lactose intolerance or other qualifying conditions.

The majority of non-participant commenters were in favor of the proposed reduced cheese substitution amounts. A total of 754 non-participant commenters (of which 589 were form letters) were supportive of the reduced substitution amounts, while 53 commenters were opposed. A total of 917 comment letters were received from program participants who opposed the proposed cheese allowances; 119 participants wrote to express support for the proposed amounts. Commenters opposing the cheese substitution amounts stated that cheese is culturally acceptable to most populations, and provides nutrients in a convenient and familiar way. Fourteen commenters asked FNS to maintain cheese at its current substitution levels and emphasize or require reduced-fat cheese.

Reducing the maximum amount of cheese lowers the amount of saturated fat, total fat, and cholesterol in the WIC food packages. Within the context of the proposed revisions to the WIC food packages as a whole, the reductions in the current levels of cheese ensure that FNS is able to provide a more balanced nutrient intake for WIC participants while maintaining cost neutrality. Therefore, the proposed substitution levels for cheese are retained in this interim rule.

(2) Soy-based beverage and tofu. To provide more flexibility for WIC State agencies and more variety and choice for WIC participants, the proposed rule would have authorized soy-based beverage to be substituted for milk for women in Food Packages V, VI and VII at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum allowance of milk. The proposal also would have allowed calcium-set tofu to be substituted at the rate of 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk could be substituted in this manner in Food Packages V and VI, and a maximum of 6 quarts of milk may be substituted in Food Package VII. Under the proposed rule, soy-based beverage and tofu would not be allowed as substitutes for milk for children in Food Package IV without medical documentation. The qualifying conditions may include, but are not limited to, milk allergy, severe lactose maldigestion, and vegan diets. Amounts of tofu that exceed the maximum substitution amounts may be authorized for women, with medical documentation, in cases of lactose intolerance or other qualifying conditions.

A total of 8,932 commenters (4,615 form letters) were supportive of adding soy-based beverage and tofu to the WIC food packages as milk substitutes; 368 commenters (148 form letters) were not supportive. Comments received on medical documentation requirements for soy-based beverage for children and FNS' rationale for retaining the provision in this interim rule as initially proposed are discussed in section IV.B.4. of this preamble.

As stated in the preamble to the proposed rule, Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) requires that nondairy beverages offered as an alternative to fluid milk in the National School Lunch Program and School Breakfast Program must be nutritionally equivalent to fluid milk and meet nutritional standards set by the Secretary of Agriculture. FNS, therefore, proposed that authorized soy-based beverage provide, at a minimum, the following nutrients:

Calcium	276 milligrams (mg) per cup.
Protein	8 grams per cup.
Vitamin A ...	500 International Units (IU) per cup.
Vitamin D	100 IU per cup.
Magnesium ..	24 mg per cup.
Phosphorus	222 mg per cup.
Potassium	349 mg per cup.
Riboflavin	0.44 mg per cup.
Vitamin B12	1.1 mcg per cup.

A total of 340 commenters (255 form letters) were opposed to the proposed minimum nutrient standard, stating that fortification at these levels is not necessary, and that soy-based beverage meeting the proposed minimum nutrition standard are not available in the marketplace. FNS believes that it is imperative for WIC and the school nutrition programs to use the same standards for defining allowable soy-based beverage as alternatives to fluid milk. Therefore, the proposed minimum nutrient standard for soy-based beverage

is retained in this interim rule. FNS is aware of at least one soy-based beverage in the marketplace that meets these requirements and anticipates that the marketplace will respond with additional products. To the extent that the marketplace doesn't respond with additional products, other options, such as tofu, are available for participants.

(3) Yogurt. The IOM recommended adding yogurt to the WIC food packages as a milk substitute for children and women. However, in order to maintain cost neutrality, the proposed rule did not include yogurt. Of the 758 commenters that addressed yogurt, 749 (617 form letters) disagreed with FNS' decision not to include yogurt. Commenters stated that yogurt provides priority nutrients, and is convenient, popular, and culturally acceptable to WIC participants.

FNS agrees that yogurt would be a desirable dairy alternative to milk for WIC participants; however, the cost is simply prohibitive ($413.9 million over 5 years). In addition, FNS has determined that WIC participants will be able to get the calcium provided by yogurt through other foods authorized in these revised food packages. Lactose-free and lactose-reduced dairy products, for example, are readily available in both urban and rural areas for those WIC participants with lactose intolerance. Calcium-set tofu and soy-based beverages are available to accommodate cultural preferences. Also, as noted earlier, a new 7 CFR 246.10(i) has been added to this interim rule to allow State agencies the flexibility to meet unanticipated cultural needs of participants.

It is important that revisions to the WIC food packages be cost neutral to protect the program's ability to serve the greatest number of eligible women, infants, and children. Therefore, FNS is unable to authorize yogurt in the WIC food packages in this interim final rule.

However, FNS solicits comments from State agencies as they implement the provisions of this interim rule about the extent to which WIC participants would benefit from the addition of yogurt, and whether that addition would be achieved in a cost-effective way. In particular, we are interested in the impact of adding yogurt for women in Food Packages V–VII.

FNS also solicits comments as to the feasibility of rebate agreements between yogurt manufacturers and individual States, so that yogurt could be provided to specific participant groups in the WIC program while maintaining cost-neutrality. State agencies are currently encouraged to explore the feasibility of cost containment systems, especially rebates, and to implement such a system where feasible for other WIC foods. In an effort to use their food grants more efficiently, 13 State agencies, which include 3 multi-State contracts, have rebate contracts for juice (frozen and shelf), infant juice and/or infant cereal. If FNS were to consider including yogurt as a WIC-eligible food through future rulemaking, FNS would be interested in the following types of information:

- Which participant groups would most benefit from having yogurt included as part of their food package?
- Would States be able to secure rebates sufficient enough to add yogurt for all or certain participant groups while maintaining cost-neutrality?

Finally, and as noted earlier, Section 203(c) of Public Law 108–265 amended Section 17(c)(2) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786), by requiring the Secretary to conduct, as often as necessary, a scientific review of supplemental foods available under the program and to amend the foods, as needed, to reflect nutrition science, public health concerns, and cultural eating patterns. As such, future reviews of the WIC food packages by FNS will be used to determine the need for yogurt.

4. Eggs

Under the proposed rule, the maximum monthly allowance for fresh shell eggs would have been reduced from the current 2 or 2½ to 1 dozen fresh shell eggs for children and women in Food Packages IV, V, and VI. For fully breastfeeding women in Food Package VII, the maximum monthly allowance was proposed at 2 dozen eggs.

A total of 1,469 commenters (266 of which were form letters) addressed the proposed egg reduction provision. Of the 492 non-participant commenters, 406 were in favor of the proposed reductions. Those opposing stated that eggs provide important nutrients at relatively low cost. Of the 1,009 program participants who commented, 923 were opposed to the reduction in eggs.

The proposed maximum monthly allowance of eggs is consistent with recommendations of the IOM [3] and the DGA [1] to reduce cholesterol. In addition, the IOM determined that protein is no longer a priority nutrient for the WIC population. Within the context of the proposed revisions to the WIC food packages as a whole, the reductions in the current levels of eggs ensures that FNS is able to provide a more balanced nutrient intake for WIC participants while maintaining cost neutrality. Therefore, the proposed maximum monthly allowances for eggs are retained in this interim rule.

5. Juice for Children and Adults

The proposed rule would have reduced the maximum allowances of juice for women and children in Food Packages IV–VII. According to the IOM, deleting or reducing the quantity of juice in the WIC food packages helps allow for the inclusion of whole fruits and vegetables while containing food costs, and is consistent with recommendations of the DGA[1] and the American Academy of Pediatrics (AAP).

For children, the proposed maximum monthly allowance of juice would have been reduced from 288 fluid ounces to 128 fluid ounces. For pregnant and partially breastfeeding women, the proposed maximum monthly allowance of juice was reduced from 288 fluid ounces to 144 fluid ounces; for postpartum women from 192 fluid ounces to 96 fluid ounces; and for fully breastfeeding women, from 336 fluid ounces to 144 fluid ounces.

A total of 2,256 commenters (846 form letters) addressed the proposed reductions in juice. Of these, 1,610 commenters (846 form letters) were supportive of the juice reductions. Eighty two of those commenters recommended that juice be eliminated entirely from the WIC food packages and replaced with fruits and vegetables. Of the 646 commenters that opposed the reduction in juice, 633 were program participants. Non-participant commenters who opposed the reductions cited the nutritional benefits of juice and stated that the proposed reductions were too drastic.

Reducing the quantity of juice in the WIC food packages helps allow for the inclusion of whole fruits and vegetables while containing food costs. The reduction in the amount of juice provided for children to about 4 ounces per day is consistent with the AAP recommendation for that age group. The AAP also notes that juice does not provide any additional nutritional benefit beyond that of whole fruit. The reduced amount of juice for women is consistent with the recommendation of the DGA[1] that whole fruits be used for a majority of the total daily amount of fruit.

Additionally, 34 commenters (14 form letters) expressed concern that juice package sizes need to be considered to ensure the full nutritional benefit of juice is received by participants. Over the years, there have been many changes in package sizes for all WIC-eligible food categories, and FNS has struggled with how to manage these changes

within WIC Program regulations that allow for a monthly maximum allowance of food that cannot be exceeded (except for the rounding option for infant formula and infant foods). It is not practical for FNS to be able to respond to all the variations in package sizing. Basing the maximum monthly allowance on package sizes would not guarantee that those package sizes will not change over time.

Therefore, FNS is retaining the proposed maximum juice allowances for children and women in this interim rule.

6. Whole Grains and Breakfast Cereals

To support the DGA[1] recommendations to consume at least 3 servings per day of whole grains to reduce the risk of coronary heart disease and type 2 diabetes, to help with body weight maintenance, and to increase intake of dietary fiber, the proposed rule would have established a whole grain requirement for breakfast cereal in Food Packages III–VII and added whole wheat bread or other whole grain options for children and pregnant and breastfeeding women in Food Packages III, IV, V and VII.

The addition of whole grains to the WIC food packages was popular across all commenter categories. A total of 17,165 comment letters (7,983 form letters) agreed with the whole grain provisions and 113 comment letters (5 form letters) disagreed with the provisions. While strongly supporting FNS' emphasis on whole grains, 876 commenters (764 form letters) expressed concern that the proposed nutritional requirement for whole grain breakfast cereal—using labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined by the Food and Drug Administration (FDA) in its December 9, 2003, *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/~dms/flgrain2.html*—is too restrictive. Commenters stated that the proposed provision would eliminate corn and rice-based cereals that are necessary for participants with wheat allergies or strong preferences for corn and rice-based cereals, as well as severely limit the total variety and choice of WIC-eligible cereals. In addition, 77 commenters (21 form letters) also stated that whole grain foods are less palatable to young children, may not be preferred by certain cultures, and therefore may not be chosen by participants, potentially negating FNS' goal to help participants increase whole grain consumption. Additionally, commenters pointed to (1) potential administrative difficulties in the identification of whole wheat bread and whole grain cereals by State agency staff when determining which products are WIC-eligible; and (2) confusion by vendors and participants at the point of purchase due to lack of consistency in food labels that do not clearly identify foods as meeting the FDA standard of identity for whole wheat bread or the labeling requirement for making the health claim as ''a whole grain with moderate fat content.''

Commenters suggested several alternatives for determining a nutritional standard for whole grain cereals including the elimination of any requirement for whole grain, adoption of an 8-gram per serving standard, and exemption of certain cereals from the whole grain requirement. FNS finds merit in commenters' concerns that the proposed whole grain nutritional requirement for breakfast cereal would eliminate corn and rice-based cereals, as well as severely limit the variety and choice of WIC-eligible breakfast cereals; and that whole grain breakfast cereals may be less palatable to participants, especially children, and less preferred by certain cultures. WIC-eligible breakfast cereals are the major source of iron in the WIC food packages for children and women and research shows that participation in WIC has a positive impact on the iron status of its participants. The IOM pointed out that despite declines in the prevalence of iron-deficiency, this deficiency remains a nutrition-related health risk for children and women of reproductive age.

Acceptability of eligible foods by participants is an important factor in the decision to authorize types and brands of foods for State food lists and therefore, in this interim rule, the provision at 7 CFR 246.10(e)(12) is revised to require that at least one half of the total number of breakfast cereals on the State's authorized food list meet the whole grain requirement using the FDA labeling requirements for making a health claim as a ''whole grain food with moderate fat content.'' Further, to assist in the identification of whole grain cereals for State agencies, vendors and participants, the interim rule adds the requirement that the primary ingredient by weight must be a whole grain. The remaining authorized breakfast cereals are required to meet only the iron and sugar requirements. State agencies may opt that all or more than half of the cereals on the State's authorized food list meet the whole grain requirement. However, in establishing minimum requirements for the variety and quantity of foods that a vendor must stock to be authorized, State agencies must require that at least one whole grain cereal be available.

FNS believes that the revisions to the proposed whole grain provisions for cereals in this interim rule will continue to support the goals of the DGA[1] for increasing whole grain consumption. State agencies are reminded that 7 CFR 246.10(b)(1)(i) allows the State to establish criteria in addition to the minimum Federal requirements for WIC supplemental foods, e.g., no artificial sweeteners.

FNS also finds merit in commenters' concerns about administrative difficulties in the identification of whole wheat bread and whole grain products. It is important that WIC nutritional requirements be simple and accurate for State agencies to use when determining foods to authorize for State food lists and that authorized whole wheat and whole grain products make significant contributions of whole wheat or whole grain to the WIC food packages. Therefore, the proposed requirements for whole wheat bread —any bread that conforms to the FDA standard of identity for whole wheat bread as defined by 21 CFR 136.180 will be retained in this interim rule. However, to assist in the identification of whole wheat bread products for State agencies, vendors and participants, the interim rule adds the requirement that the primary ingredient by weight must be whole wheat. FNS also clarifies in this interim rule that whole wheat buns and rolls that meet the FDA standard of identity for whole wheat bread, and have whole wheat as their primary ingredient, are WIC-eligible.

The proposed requirements for whole grain breads—any bread product that meets labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined by FDA in its December 9, 2003, *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/~dms/flgrain2.html*—will also be retained in this interim rule. However, the interim rule adds the requirement that the primary ingredient by weight must be whole grain.

The revisions to the whole wheat and whole grain bread requirements will allow products that are 100% whole grain, or are primarily whole wheat or multi-grain, to be WIC-eligible as well as provide an easy way for participants and vendors to identify whole wheat and whole grain bread products by using the food label. The primary ingredient is easily identified on the food label since ingredients are listed in

descending order of predominance by weight.

To ensure that the whole grain options are consistent with the intent of the IOM recommendations, this interim rule also clarifies that the brown rice, bulgur (cracked wheat), oatmeal, and barley (whole-grain) are the whole unprocessed grain, and that soft corn and whole wheat tortillas must have the whole grain as the primary ingredient by weight according to the food label. A technical oversight in the proposed food package rule has been corrected in this interim rule by removing the requirement that authorized soft corn or whole wheat tortillas contain no added fats or oils.

In the interim rule, State agencies will continue to be responsible for determining which types and brands of whole wheat bread and whole grain products and breakfast cereals to authorize on State food lists using the minimum requirements and specifications in Table 4 at 7 CFR 246.10(e)(12). FNS will provide information on label reading and marketplace availability to State agencies to assist in the identification of whole wheat and whole grain foods and on nutrition education that encourages increased consumption of whole grains. The assistance of industry is requested in notifying FNS of whole wheat and whole grain bread products, whole grain cereals, and whole grain options that may meet the newly established nutritional requirements. Information may be mailed or sent electronically to FNS at the addresses provided at the beginning of this preamble.

Maximum Monthly Allowance

The proposed rule would have established a maximum monthly allowance of 2 pounds of whole wheat bread or other whole grain options for children in Food Packages III and IV; and 1 pound of whole wheat bread or other whole grain options for women in Food Packages III, V and VII. The rule proposed a maximum monthly allowance of 36 ounces of breakfast cereal for children and women in Food Packages III–VII. While supporting the addition of whole wheat bread and other whole grain options to the WIC food packages, 95 comment letters (38 form letters) expressed concern that the package sizes of bread are not commonly available in either one- or two-pound loaves and that the participants would have difficulty purchasing the maximum monthly allowance for whole wheat bread. FNS has long recognized that package sizes of WIC-eligible foods vary among manufacturers and those manufacturers may change package sizes at any time. Over the years, there have been many changes in package sizes for all WIC-eligible food categories, and FNS has struggled with how to manage these changes within WIC Program regulations that allow for a monthly maximum allowance of food that cannot be exceeded (except for the rounding option for infant formula and infant foods). It is not practical for FNS to be able to respond to all the variations in package sizing. Basing the maximum monthly allowance on package sizes would not guarantee that those package sizes will not change over time and, therefore, the maximum monthly allowance for whole wheat bread and other whole grain options and breakfast cereal remains as proposed.

7. Canned Fish

The proposed rule would have authorized 30 ounces of a variety of canned fish in Food Package VII for fully breastfeeding women. The following varieties of canned fish were proposed—light tuna, salmon, and sardines. In the proposed rule, FNS solicited input on additional canned fish to offer in Food Package VII.

A total of 3,546 commenters (26 form letters) expressed support for the proposed canned fish provisions; 555 commenters opposed. Of the opposing comment letters received, 506 were variations of one form letter submitted as part of a letter writing campaign initiated by an advocacy organization concerned with the public's exposure to methylmercury. These and other opposing commenters believe that canned light tuna should be eliminated from the WIC food packages until more study is conducted on its mercury content. Two commenters (1 form letter) opposed the omission of albacore tuna from the list of authorized varieties of canned fish.

The IOM recommended that a variety of canned fish that do not pose a mercury hazard be offered in Food Package VII. As identified by federal advisories of the Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA),[4] canned light tuna, salmon, and sardines are among those fish that are lower in mercury. For ease of administration by State agencies, to accommodate participant preferences, and to minimize intake of mercury, this interim rule retains the proposed varieties of canned fish in Food Package VII for fully breastfeeding women. In response to commenters' requests, canned mackerel—N. Atlantic and Chub (Pacific)—also identified as lower in mercury, has been added in this interim rule as an authorized canned fish in Food Package VII.

8. Proposed Food Packages I and II for Infants

The rule proposed the following changes in Food Packages I and II for infants:

- Revise age specifications for assignment to infant food packages;
- Delay introduction of complementary food to six months of age;
- Establish 3 feeding options within each infant food package—fully breastfed, partially breastfed, or fully formula fed;
- Revise maximum monthly infant formula allowances;
- Add infant food fruits and vegetables in Food Package II;
- Eliminate juice from both infant food packages;
- Disallow provision of infant formula for breastfed infants during the first month after birth;
- Disallow low iron infant formula;
- Allow commercial infant food meat for fully breastfed infants in Food Package II; and
- Reassign infants with a qualifying condition to proposed Food Package III—Participants With Qualifying Conditions—and authorize the issuance of exempt infant formulas only in Food Package III.

The proposed revisions to Food Packages I and II for infants were designed to better promote and support the establishment of successful long-term breastfeeding among women who choose that feeding method, address differences in nutritional needs of breastfed and formula fed infants, address developmental needs of infants, bring the infant food packages in line with current infant feeding practice guidelines from the AAP, and serve all participants with certain medical conditions under one food package to facilitate efficient management of medically fragile participants.

a. Food Package I for Infants Under Six Months

Under current WIC regulations, a maximum formula allowance is specified for all infants assigned to Food Package I, regardless of infant feeding practice; WIC staff may tailor the amount of formula to reflect the individual needs of the infants. The proposed rule would have extended the age range of infants covered by Food Package I by two months, thereby delaying introduction of complementary foods previously offered in this food package (juice and cereal) until six months of age. In proposed Food

Package I, fully formula fed infants four through five months of age would receive a slightly increased amount of infant formula to compensate in part for the decrease in nutrients and calories that results from the omission of juice and infant cereal. Also, to more actively support successful breastfeeding, the proposed rule would set a maximum formula amount for partially breastfed infants in Food Package I that is roughly half the maximum provided to fully formula fed infants.

b. Food Package II for Infants Six Through Eleven Months

Under the proposed rule, the amounts of formula and the amounts and type of infant foods would vary by infant feeding option. Infant food fruits and vegetables would be added to Food Package II, infant juice eliminated, and maximum formula allowances reduced for both partially breastfed and fully formula fed infants.

The majority of commenters were supportive of the revisions to the infant food packages as proposed. The discussion that follows pertains to those provisions that received significant or substantial opposing comments, suggested alternatives, or requests for clarifications. Provisions related to the proposed food packages for infants that are not addressed in this preamble did not receive significant or substantial public comments and are therefore retained in this interim rule as proposed.

c. Breastfeeding Provisions

The proposed food packages for infants and women were designed to strengthen WIC's breastfeeding promotion efforts and provide additional incentives to assist mothers in making the decision to initiate and continue to breastfeed. The IOM's three-pronged approach to better promote and support breastfeeding through the WIC food packages was proposed. The approach focuses on the market value of the package for the mother/infant pair for the first year after birth, addresses differences in supplementary nutrition needs of breastfed and formula fed infants, and considers how to minimize early supplementation with infant formula through continued or increased efforts to promote and support the breastfeeding dyad.

Because early supplementation may contribute to the short duration of breastfeeding, only two infant feeding options were recommended initially after delivery—either full breastfeeding or full infant formula-feeding. The IOM recommended this approach because physiology provides a strong basis for avoiding supplemental formula. The amount of milk a breastfeeding woman produces depends directly on how often and how long she nurses. Providing supplemental formula to a new breastfeeding mother may interfere with her milk production and success at continued breastfeeding.

The differences in the proposed packages for the mother-infant pairs were based on differences in nutritional needs. For example, fully breastfeeding women require additional calories per day during the first six months postpartum as well as higher levels of most vitamins and minerals. Thus, the package for fully breastfeeding women provides the most food energy and nutrients, and the package for fully formula-feeding women provides the least. Similarly, starting at age six months, the proposed package for fully breastfed infants would have included commercial infant food meats to add a source of iron and zinc.

These proposed food package changes, as recommended by the IOM, were intended to strengthen WIC's efforts to promote and support breastfeeding as the optimal infant feeding choice for WIC mothers.

In general, commenters expressed support for the proposed breastfeeding provisions. Of the 1,057 commenters (774 form letters) that made statements regarding the breastfeeding provisions, 1,017 (753 form letters) were supportive of the provisions, stating that they add value and incentive for mothers to breastfeed and support WIC's efforts to promote breastfeeding as the optimal infant feeding choice.

The largest number of opposing comments on the breastfeeding provisions focused on those related to the establishment of infant feeding options the first month after birth, as described below.

Establishment of Infant Feeding Options—First Month After Birth

To support the successful establishment of breastfeeding, the proposed rule would have established two infant feeding options for the first month after birth, either full breastfeeding or full formula-feeding. Under the proposed rule, infant formula would not be provided for fully or partially breastfeeding infants during the first month of life after birth. The IOM recommended this approach because providing supplemental formula to a new breastfeeding mother may interfere with her milk production and success at continued breastfeeding.

A total of 862 commenters (540 form letters) addressed this provision. Of those, 195 commenters (102 form letters) agreed with the provision as written. A total of 667 commenters (438 form letters) were opposed. While agreeing with its premise—that early supplementation inhibits the establishment of successful breastfeeding in the critical early weeks of an infants life—opposing commenters expressed concern that some WIC State and local agencies may not be prepared to provide support services (peer counselors, breast pumps, consultation with lactation experts) to the extent necessary to make this provision work for every mother. As a result, a mother who feels less than confident about her ability to breastfeed may choose to either (1) categorize her infant as fully formula fed, thus receiving more formula than is necessary for the breastfeeding infant and further compromising the establishment of successful breastfeeding, or (2) not breastfeed at all. Other commenters pointed to legitimate medical reasons that a breastfeeding mother/infant dyad may have which result in the need for supplemental formula in the early postpartum period, such as infants with metabolic disorders. Commenters urged FNS to consider allowing State agencies the option to provide a small amount of infant formula during the first month in limited situations.

FNS finds the arguments put forth by commenters compelling. Therefore, the provisions at 7 CFR 246.10(e)(1)(ii)(A) and in Table 1 of 7 CFR 246.10(e)(9) are revised as follows. Three infant feeding options will be authorized in the first month after birth—either (1) fully formula feeding; (2) fully breastfeeding; or (3) partially breastfeeding. As proposed, no supplemental formula will be provided for fully breastfeeding infants. The third infant feeding option—partially breastfeeding—will be offered to the infant who is breastfed but also receives not more than 104 reconstituted fluid ounces of formula from the WIC program. Food Package V will be provided to mothers of these partially breastfeeding infants.

Partially breastfed infants ages 0 to 1 month may receive the equivalent of not more than 104 fluid ounces of reconstituted infant formula. This will allow State agencies to issue one can of powder infant formula commonly used in WIC, and is responsive to commenters' requests to make a small amount of infant formula available for partially breastfeeding infants in the first month. Powder infant formula is recommended until the partially breastfed infant reaches four months of age due to its longer shelf life and to minimize waste. The CPA is expected to individually tailor the amount based on

the carefully assessed needs of the individual breastfeeding infant. This means that mothers of partially breastfed infants should not ''automatically'' be provided a can of formula in the first month of life. If, after a careful assessment, the CPA determines that some formula is appropriate for the infant in the first month, the mother should be advised on the appropriate amount of that one can of formula to feed the infant. The goal is to provide as minimal amount of supplemental formula as is needed, while offering counseling and support, in order to help the mother establish a successful milk supply.

FNS is aware that adequate breastfeeding support for mothers is important for the success of both the partially and fully breastfeeding options in the first month after birth. FNS is committed to strengthening WIC's efforts to promote and support breastfeeding, through the provision of peer counseling funding to State agencies and other means. Judicious use of NSA funds by State agencies directed toward research-based support known to be effective—i.e., peer counseling, consultation with lactation experts—will further enhance the ability of State and local agencies to assist mothers in establishing and continuing successful breastfeeding in the critical weeks after birth and beyond. FNS' view is that the provision of a small amount of formula for certain infants in the first month of life is a temporary option that State agencies may invoke to assist breastfeeding mothers who may otherwise choose to fully formula feed. FNS expects that the proportion of participants offered the partially breastfeeding option in the first month will decrease over time as State agencies strengthen their breastfeeding support infrastructure.

d. Maximum Monthly Allowances of Infant Formula

Under the proposed rule, the maximum monthly allowance of infant formula would be revised from current levels to reflect the proposed feeding options (fully formula feeding, partially breastfeeding, and fully breastfeeding), physical form of infant formula provided (liquid concentrate, powder, or ready-to-feed), and the age of the infant. A total of 574 commenters (143 form letters) addressed the maximum monthly allowances of infant formula. Two hundred forty four commenters were opposed to changes in the maximum monthly allowances; of these, 148 were program participants. The majority of comments centered on two specific issues: (1) The variation in amounts of formula provided during the different age specifications; and (2) a decrease in amount of formula available, especially for the 6–12 month old infant. Non-participant commenters in opposition to revising formula allowances stated that reducing formula will result in supplementation with whole milk or inappropriate liquids. Some non-participant commenters stated that formula amounts should stay the same as in current regulations and the CPA should tailor the packages as appropriate for the needs of individual infants. Participant commenters expressed concern that formula is expensive and if WIC reduces the amount provided it will increase their out-of-pocket expenses to purchase the additional formula.

The proposed maximum formula allowances for infants were determined based on a scientific review of the calorie and nutrient needs of infants at different ages. The proposed amounts of infant formula for partially breastfeeding infants in Food Packages I and II are designed to enhance the promotion and support of breastfeeding. The provision is part of the IOM's comprehensive approach resulting from thorough consideration of scientific research and public comments on how to promote and support breastfeeding. The maximum amount for partially breastfed infants provides approximately half the amount provided to fully formula fed infants—to provide about half of the infant's nutritional needs to encourage the mother to breastfeed enough to provide at least half of the infant's nutritional needs. This approach is preferable to current tailoring because it establishes a standard procedure that promotes breastfeeding as the optimal way to feed infants across WIC programs. The addition of infant foods, along with the proposed amount of formula for infants in Food Package II, provides close to recommended amounts of nutrients, introduces more variety into the infant's diet and encourages healthy dietary patterns. FNS believes that the nutrition education and anticipatory guidance on infant feeding provided by WIC local agencies will enable participants and caregivers to make informed choices about appropriate liquids for infants.

Other commenters asked for clarification on the maximum monthly allowances of infant formula per physical form and suggested that the maximum monthly allowance for infant formula be the same for all physical forms. The IOM recommended a maximum monthly allowance of liquid concentrate but stated that powder or ready-to-feed formula (RTF) may be substituted for liquid concentrate at rates that provide the approximate number of fluid ounces as the liquid concentrate. The IOM recommended rounding to whole cans to approximate the target amount. FNS recognizes that powder infant formula is an increasingly popular physical form with WIC agencies and participants. In determining the amount of powder formula to authorize, FNS considered the cans sizes commonly used in WIC, their reconstituted yields, and the range of dry powder ounces recommended by the IOM. The maximum monthly allowance of powder infant formula provides at least the number of fluid ounces as the same reconstituted liquid concentrate for the 3 major milk-based infant formulas manufactured that State agencies issue, thereby ensuring a minimum level of nutrition for infants regardless of physical form.

As described in section C.8.c. of this preamble, partially breastfed infants ages 0 to 1 month may receive the equivalent of not more than 104 fluid ounces of reconstituted infant formula. This will allow State agencies to issue one can of powder infant formula commonly used in WIC, and is responsive to commenters' requests to make a small amount of infant formula available for partially breastfeeding infants in the first month. The maximum allowances of infant formula for infants 1 month and older in Food Package I and II are retained in this interim rule as proposed.

EXHIBIT A.—MAXIMUM MONTHLY ALLOWANCES FOR FOOD PACKAGE I FOR INFANTS AGES BIRTH TO 6 MONTHS, BY FEEDING OPTION

WIC food	Fully breastfed infants	Partially breastfed infants			Fully formula fed infants	
	0 through 5 months	Birth to one month	1 through 3 months	4 through 5 months	0 through 3 months	4 through 5 months
Infant Formula	NA	104 fl oz reconstituted powder.	364 fl oz reconstituted liquid concentrate*.	442 fl oz reconstituted liquid concentrate.	806 fl oz reconstituted liquid concentrate.	884 fl oz reconstituted liquid concentrate.

NA= not applicable.
*The maximum monthly allowance is specified in the liquid concentrate form; however, powder and RTF are allowable substitutes and the powder form is recommended for partially breastfed infants, ages 0 through 3 months of age.

Two technical oversights in the proposed food package rule have been corrected in this interim rule by adjusting the maximum monthly allowance of RTF formula in Food Package I.A. from 800 fluid ounces to 832 fluid ounces, and in Food Package II.A. from 364 fluid ounces to 384 fluid ounces.

e. Elimination of Juice for Infants and Addition of Infant Foods in Food Package II

A total of 629 commenters (69 form letters) addressed the elimination of juice from the infant food packages. The majority of commenters were in agreement with the provision to eliminate juice from the infant food packages, stating that juice is not nutritionally valuable or necessary for infants. A total of 242 commenters were opposed; 228 of those opposed were program participants. Twelve non-participant commenters stated that the elimination of juice may lead to substitution of lower-cost sweetened beverages. The IOM specifically recommended that infant food fruits and vegetables replace juice for infants 6 through 12 months of age. An important part of the nutrition education provided by WIC staff to parents and caregivers of infant participants' is information on the timing and types of complementary foods appropriate for infants.

The addition of jarred infant foods (fruits, vegetables, meat) to Food Package II was well received by commenters. Of the 5,953 commenters that addressed infant foods, 5,887 commenters (of these, 131 were form letters) expressed support for the addition of infant foods. Those that opposed asked that fresh, canned, or frozen fruits and vegetables be allowed in Food Package II instead of, or as an option, to jarred infant foods. Some of these commenters believe that jarred infant foods are environmentally wasteful and costly. Others stated that the provision of jarred foods undermines nutrition education messages about home prepared foods for infants. Some commenters stated that providing a cash value voucher for fruits and vegetables for infants 9–12 months of age may be more developmentally appropriate for this age group.

The IOM specifically recommended ''commercial baby food fruits and vegetables and fresh bananas'' for (1) early introduction to new flavors and textures over time; (2) nutrient content; (3) availability in developmentally appropriate textures; and (4) food safety. Further, the provision of commercial baby food fruits and vegetables helps ensure that these items are consumed by infants and not other participants, an important consideration since the amount of infant formula in Food Package II is reduced from current levels and replaced with complementary infant foods. Therefore, the proposed provisions about jarred infant foods in Food Package II are retained in this interim rule. FNS does not believe that the provision of jarred infant foods is incompatible with the nutrition education provided by WIC staff related to appropriate food choices and home preparation of foods for infants since the amount of infant foods provided by WIC is supplemental to an infant's entire needs.

(1) Authorized infant meat. A technical oversight in the proposed rule has been corrected in this interim rule by clarifying the minimum requirements and specifications for authorized infant meat as—any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e. sodium) are not allowed. Texture may range from pureed through diced.

(2) Infant cereal. As proposed, the maximum quantity of infant cereal was not changed from current WIC regulations. Thirteen commenters believe that the amount of infant cereal should be reduced. These commenters stated that in their experience infants did not eat the volume of infant cereal provided by WIC. The IOM recommended that the amount of iron-fortified infant cereal for infants six months and older remain at 24 ounces. Therefore, the proposed maximum amount of infant cereal is retained in this interim rule.

f. Rounding Up of Infant Foods

Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004, contains a provision that allows a State agency to round up to the next whole can of infant formula to allow all participants to receive the full-authorized nutritional benefit specified by regulation. This provision only applies to infant formula (not exempt infant formula or WIC-eligible medical foods) issued as a result from a solicitation bid on or after October 1, 2004. The proposed rule described the ''full-authorized nutritional benefit'' as well as a methodology that State agencies would be required to use if choosing to implement the option to round up. Consistent with the authority allowing State agencies to round up infant formula, FNS proposed rounding up of infant foods (infant cereal, fruit, vegetables and meat) to provide administrative flexibility to State agencies to ensure that infants would receive the full nutritional benefit recommended by the IOM.

Of the 139 comments received on this issue, 129 commenters (66 form letters) disagreed with the proposed methodology for rounding up. Seventy-seven commenters (40 form letters) stated that the proposed methodology was confusing and time-consuming to calculate. Twenty-four commenters (21 form letters) urged FNS to allow State agencies to determine their own methodology for rounding up. FNS is sensitive to commenters' concerns and will further assist State agencies that choose to implement the option to round up. FNS believes, however, that a standard methodology for rounding up, uniformly applied across State agencies, is imperative. Therefore, the

rounding up provisions are retained in this interim rule as proposed, except that this interim rule clarifies that the full nutritional benefit for infant formula is provided as a minimum on average during the timeframe that the food package is provided. This means that when the rounding methodology is applied, in some months participants will receive less than the full nutritional benefit amount, and other months will receive more; however, on average, participants will receive the full nutritional benefit. The full nutritional benefit is defined as the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula for the food package category and feeding option, e.g. partially breastfed infants 4 through 5 months of age.

9. Revisions in Food Package III and Their Effect on Food Packages I and II

Under proposed Food Package III, infants with qualifying conditions would be added and other supplemental foods would be authorized. The revisions were intended to provide flexibility in accommodating the wide range of nutritional needs of participants served by this food package, and facilitate the efficient management and tracking of the costs of providing supplemental foods to persons with the most serious medical conditions. Of the 86 comment letters that addressed the proposed revisions to Food Package III, 74 commenters (38 form letters) agreed with the proposed changes, especially the addition of supplemental foods other than WIC formula, cereal and juice that are currently authorized. Twelve commenters (5 form letters) disagreed with the proposed revisions. Commenters remarked on a few specific provisions. While agreeing with the majority of provisions, 21 commenters (19 form letters) from State and local agencies asked that FNS clarify the scope of Food Package III since infants receiving an exempt infant formula for a medical condition would now be served under that package rather than under Food Packages I and II as in current regulations. These same commenters wanted clarification on the qualifying conditions that would allow a participant to receive Food Package III. FNS realizes that serving infants with certain medical conditions under Food Package III rather than under Food Packages I and II will be a major change for WIC staff. As stated in the preamble of the proposed rule, only infant formula would be authorized in Food Packages I and II. Infant formula is a food substitute for human milk for generally healthy, full-term infants. Infant formula includes milk-based, soy-based and lactose-free products. Therefore, infants served under Food Packages I and II will be generally healthy, full-term infants. Conversely, infants with a serious nutritionally-related medical condition that requires an exempt infant formula or WIC-eligible medical food would be served under Food Package III. Women and children with serious medical conditions would also be served under Food Package III. FNS reminds readers that the WIC Works Formula Database, *http://www.nal.usda.gov/wicworks* provides helpful information on the identification and indications for use of infant formulas, exempt infant formulas and WIC-eligible medical foods.

Commenters were also concerned about medically fragile infants 6 months of age or greater whose medical condition prevents them from consuming complementary infant foods. Commenters requested that these infants receive more WIC formula in replacement of the nutrition that would result from the addition of complementary foods. FNS finds merit in this concern and therefore will revise the provision in Table 1 of 7 CFR 246.10(e)(9) to allow medically fragile infants 6 months of age or greater whose medical condition prevents them from consuming complementary infant foods (cereal, fruit and vegetables, and meat) to receive exempt infant formula or WIC-eligible medical foods at the same maximum monthly allowance as infants ages 4 through 5 months of the same feeding option. The provision of exempt infant formula or WIC-eligible medical foods for these infants is in lieu of provision of complementary infant foods.

In the proposed rule, FNS requested comments on WIC-eligible medical foods. Of the 36 comments received, 21 commenters (14 form letters) agreed with the WIC-eligible medical food provisions and 15 (all form letters) disagreed. As discussed in section IV.A. of this preamble, commenters disagreed with the proposed definition for WIC-eligible medical foods.

Of the 27 commenters (14 form letters) who addressed ways to determine nutritional equivalency for other than liquid forms of ready-to-feed (RTF) medical foods, e.g. bars and puddings, 17 commenters (14 form letters) recommended that protein equivalents be used and 10 commenters felt that the CPA, in consultation with the health care provider, should determine the amount of WIC-eligible medical foods to prescribe, based on a thorough nutritional assessment. One commenter also suggested that FNS consider a serving per day equivalent. FNS has determined that more information is needed about nutritional equivalency for other than liquid RTF forms of WIC-eligible medical foods. FNS will consult with experts from industry as well as the FDA prior to developing guidance for WIC agencies on ways to determine nutritional equivalency for various physical forms of WIC-eligible medical foods.

D. Implementation Timeframe for Revised Food Packages

FNS proposed a one-year implementation timeframe for the majority of the revisions to the WIC food packages, with the following exceptions—(1) a six-month timeframe was proposed for the elimination of juice for infants; and (2) a limitation was proposed on the ability to implement the partially breastfeeding food packages for infants and women to not more than 32 sites within up to eight selected State agencies so that FNS could examine the effects of the revisions on the initiation and duration of breastfeeding before allowing full implementation by all State agencies.

Of the 203 commenters (137 form letters) who addressed the proposed one-year implementation of the revised food package changes for pregnant, postpartum, and fully breastfeeding women, fully formula fed and fully breastfeeding infants, children, and participants with certain medical conditions, 191 commenters (135 form letters) were opposed. Commenters asked for a longer implementation timeframe due to the complexity of the provisions, changes to management information systems, and training needs of staff, vendors and participants. FNS is, therefore, extending the timeframe for implementation of these new food packages to 18 months after the effective date of this interim rule.

A total of 611 commenters (501 form letters) addressed the proposed implementation plan for the partially breastfeeding food packages for infants and women. Of these, 590 commenters (501 form letters) were strongly opposed to the plan. Commenters stated that deferring access to these packages denies WIC Programs a vital tool to encourage women to breastfeed and unnecessarily delays participant access to the proposed improvements in these food packages. Commenters also expressed concern that offering both new and old food packages for up to 3 years after implementing the new food packages would create an administrative burden for State agencies and could cause confusion for WIC participants.

Finally, commenters pointed out that under the proposed implementation plan, partially breastfed infants 6 months to 11 months old could receive more infant formula than fully formula fed infants.

In light of the viewpoints expressed by commenters, and as a result of further review and determination by FNS, the implementation timeframe for the partially breastfeeding food packages for infants and women is revised to be concurrent with implementation of the other food packages—18 months from the effective date of this interim rule. FNS remains committed to examining the impact of the significant changes to these food packages on the breastfeeding mother/infant dyad, and is developing a study design that allows an assessment of the effects of these changes without delaying national implementation. In addition, FNS encourages State WIC agencies to examine the impact of these food package changes in the first month following birth on breastfeeding initiation, intensity and duration and to share the results with FNS and the WIC community.

The following chart summarizes the revised implementation timeframes for all food package changes.

TIMELINES FOR IMPLEMENTATION OF FOOD PACKAGE CHANGES

Food package category	Who must implement	Timeframe for implementation
Pregnant Women	All State Agencies	18 Months from Effective Date of Interim Rule.
Postpartum Women	All State Agencies	18 Months from Effective Date of Interim Rule.
Fully Breastfeeding Women	All State Agencies	18 Months from Effective Date of Interim Rule.
Partially Breastfeeding Women	All State Agencies	18 Months from Effective Date of Interim Rule.
Fully Formula fed Infants	All State Agencies	18 Months from Effective Date of Interim Rule.
Partially Breastfed Infants	All State Agencies	18 Months from Effective Date of Interim Rule.
Fully Breastfed Infants	All State Agencies	18 Months from Effective Date of Interim Rule.
Juice Elimination from Infant Food Packages	All State Agencies	18 Months from Effective Date of Interim Rule.
Children	All State Agencies	18 Months from Effective Date of Interim Rule.
Participants with Certain Medical Conditions (Women, Infants and Children).	All State Agencies	18 Months from Effective Date of Interim Rule.

During the 18-month phase-in period, State agencies are required to issue food benefits based on either the new food packages or current food packages but may not combine the two. For example, a State agency may not add whole wheat bread and fresh fruits and vegetables to the current foods and quantities available under the children's food package. The State agency may, however, phase-in the new food packages on a participant category basis. To minimize participant and vendor confusion, once the State agency begins issuing the new food packages, it must be done on a Statewide basis. FNS will collaborate with the National WIC Association on developing recommendations and options for rolling out the new food packages, based on ease of administration and other issues. State agencies must, however, roll out the food packages for the partially breastfeed mother/infant dyad concurrently, and are also strongly encouraged to concurrently roll out the food packages for the fully breastfed mother/infant dyad.

V. Endnotes

(1) U.S. Department of Health and Human Services/U.S. Department of Agriculture, Dietary Guidelines for Americans, 2005. Available at Internet site: *http://www.healthierus.gov/dietaryguidelines/*.

(2) Institute of Medicine, National Academy of Sciences. ''WIC Food Packages: Time for a Change,'' 2005. Available at Internet site: *http://www.fns.usda.gov/oane/menu/Published/WIC/FILES/Time4AChange(mainrpt).pdf*.

(3) Institute of Medicine, National Academy of Sciences, 2002a. Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids. Washington, DC: National Academy Press.

(4) Environmental Protection Agency/Food and Drug Administration. ''What You Need to Know About Mercury in Fish and Shellfish.'' EPA and FDA Advice for: Women Who Might Become Pregnant, Women Who Are Pregnant, Nursing Mothers, and Young Children. 2004. Available at Internet site: *http://www.cfsan.fda.gov/dms/admehg3.html*.

VI. Procedural Matters

Executive Order 12866

This interim rule has been determined to be economically significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this interim rule. It follows this regulation as an Appendix. The conclusions of this analysis are summarized below.

Need for Action. As the population served by WIC has grown and become more diverse over the last 20 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. A rule is needed to implement recommended changes to the WIC food packages based on the current nutritional needs of WIC participants and advances in nutrition science.

Benefits. Benefits of this rule include bringing the WIC food packages in line with the Dietary Guidelines for Americans(1) and current infant feeding practice guidelines of the American Academy of Pediatrics, better promoting and supporting the establishment of successful long-term breastfeeding, providing WIC participants with a wider variety of food, providing WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences, and serving all participants with certain medical conditions under one food package to facilitate efficient management of medically fragile participants.

Costs. FNS estimates that the provisions in this interim rule will have minimal impact on total costs over 5 years.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C 601–612). Nancy Montanez Johner, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local agencies and WIC participants will be most affected by the rule and WIC authorized vendors and the food industry may be indirectly affected.

Although not required by the Regulatory Flexibility Act, FNS has prepared a Regulatory Flexibility Analysis (RFA) describing the impact of this interim rule on small entities. The RFA reflects comments that were received on the Initial Regulatory Flexibility Analysis that was included in the WIC Food Package Proposed Rule published at 71 FR 44784. Additional analysis of the regulatory flexibility considerations of this interim rule may be found in the Regulatory Impact Analysis section of this preamble and the cited RIA itself.

Need For, and Objectives of, the Interim Rule

This interim rule revises regulations governing the WIC food packages to change the maximum monthly allowances and minimum requirements for certain supplemental foods, and add new foods such as fruits, vegetables and whole grains. The revisions largely reflect recommendations made by the Institute of Medicine of the National Academies in its Report ''WIC Food Packages: Time for a Change.'' [2] These revisions bring the WIC food packages in line with the Dietary Guidelines for Americans[1] and current infant feeding practice guidelines of the American Academy of Pediatrics, better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, and provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences.

Description and Estimate of Number of Small Entities To Which the Interim Rule Would Apply

This interim rule applies to WIC State agencies with respect to their selection of foods to be included on their food lists. As a result, vendors will be indirectly affected and the food industry will realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally. The rule may have an indirect economic affect on certain small businesses because they may have to carry a larger variety of certain foods to be eligible for authorization as a WIC vendor. Currently, approximately 46,000 stores are authorized to accept WIC food instruments, some of which are small businesses. With the high degree of State flexibility allowable under this interim rule, small vendors will be impacted differently in each State depending upon how that State chooses to meet the new requirements. It is, therefore, not feasible to accurately estimate the rule's impact on small vendors. Since neither FNS nor the State agencies regulate food producers under the WIC Program, it is not known how many small entities within that industry may be indirectly affected by the interim rule.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This interim rule provides State agencies with greater flexibility in prescribing food packages to WIC participants. The information collection burden estimated for this rule is 14,598 hours. The burden reflects requirements associated with medical documentation for the issuance of any supplemental foods issued to participants who receive Food Package III; any authorized soy-based beverage or tofu issued to children who receive Food Package IV; and, any additional authorized tofu and cheese issued to women who receive Food Packages V and VII that exceeds the maximum substitution rate.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

FNS has considered significant alternatives in developing this interim rule including those that may reduce the indirect impact on small business. These considerations include (among others) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.

In general, the alternatives of exempting small entities from the requirements in this interim rule or altering the requirements for small entities were rejected. The WIC food packages provide supplemental foods designed to address the nutritional needs of low-income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to age five who are at nutritional risk. Exempting small entities from providing the specific foods intended to address the nutritional needs of participants or altering the requirements for small entities would undermine the purpose of the WIC Program and endanger the health status of participants.

FNS has, however, modified the new food provision in an effort to mitigate the impact on small entities. Currently, State agencies must establish minimum requirements for the variety and quantity of foods that a vendor must stock in order to receive WIC Program authorization. This rule adds new food items, such as fruits and vegetables and whole grain breads, which may require some WIC vendors, particularly smaller stores, to expand the types and quantities of food items stocked in order to maintain their WIC authorization. In addition, vendors also have to make available more than one food type from each WIC food category, except for the categories of peanut butter and eggs, which may be a change for some vendors. To mitigate the impact of the fruit and vegetable requirement, the rule allows canned, frozen and dried fruits and vegetables to be substituted for fresh produce.

Federal Rules That May Duplicate, Overlap, or Conflict With the Interim Rule

There are no Federal rules that may duplicate, overlap, or conflict with the provisions of this interim rule.

Public Law 104–4, Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under

No. 10.557. For reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29114, June 24, 1983), this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With WIC State and Local Agency Officials

Over the years FNS has received numerous requests from WIC State and local agencies to modify the current food packages to permit greater substitution of foods or introduction of additional foods. These requests have come from formal and informal discussions and with State and local officials on an ongoing basis regarding program implementation and food package policy issues, and from written proposals and comments submitted to FNS by WIC State and local agencies to allow modifications and/or substitutions to the WIC food packages. Requests for revisions to the WIC food packages have also been received from Congress, participants, and organizations with interests in the welfare of WIC participants.

Examples of the different forums and methods FNS has used over the years to solicit WIC State and local agency staff input on the WIC food packages include the following.

• Publishing an advanced notice of proposed rulemaking (ANPR) in 2003 to solicit comments to determine if the WIC food packages should be revised to better improve the nutritional intake, health and development of participants; and, if so, what specific changes should be made to the food packages. In response to the ANPR, FNS received 195 total comments;

• Commissioning the National Academies' Institute of Medicine (IOM) to independently review the WIC Food Packages. IOM solicited public comment on revisions to the WIC food packages, via 3 public hearings, letters and e-mail, throughout its 22-month study period. IOM considered these comments, as well as comments FNS received in response to the ANPR, in developing recommendations to revise the WIC food packages. IOM published its reports of these recommendations on April 27, 2005: ''WIC Food Packages: Time for a Change.'' [2] This rule incorporates IOM's recommendations;

• Hosting annual meetings (1977-present) of the National Advisory Council on Maternal, Infant and Fetal Nutrition that includes WIC staff as members of the Council; the Council develops recommendations for FNS on how to improve operations of the WIC and Commodity Supplemental Food Programs, including aspects related to the authorized foods and food packages; and

• Consulting and collaborating with NWA on a wide variety of WIC issues, including those related to the WIC food packages (1983-present). NWA is a non-profit organization that was founded in 1983 by State and local agencies that administer the WIC Program. In 2006, NWA's paid membership included 75 of the 89 WIC State agencies, 675 local agencies, 5 State WIC Associations, and 19 sustaining members (i.e., for-profit and non-profit businesses or organizations). Functioning as a coalition of WIC agencies, NWA is dedicated to maximizing WIC resources through effective management practices. NWA also serves in a leadership role for WIC agencies by developing position papers on issues of concern to the WIC community.

Nature of Concerns and the Need To Issue This Rule

• Congress has requested a WIC food package rule that includes fruits and vegetables and allows for cultural food accommodations and responds to the needs of the WIC population.

• The National Advisory Council on Maternal, Infant, and Fetal Nutrition, in its annual Reports to FNS, recommends better accommodation of the nutritional and cultural needs of WIC participants through the WIC food packages; and

• In 1999, NWA (then the National Association of WIC Directors (NAWD)) published a position paper entitled ''NAWD WIC Food Prescription Recommendations'' and in 2003, NWA published a position paper entitled ''NWA WIC Culturally Sensitive Food Prescription Recommendations.'' NWA's major recommendations in these two reports were to reframe the WIC food packages to be consistent with the Dietary Guidelines for Americans and allow State agencies flexibility to accommodate cultural eating patterns.

Based upon the need to address the nutritional needs of the WIC population given current scientific information and consumption patterns as exemplified by the concerns and recommendations of NWA, and others, FNS was aware of the need to revise the WIC food packages.

Extent to Which We Meet Those Concerns

FNS has considered the impact of the interim rule on State and local agencies. FNS believes that the rule is responsive to the expressed concerns and requests of commenters representing State and local concerns. A few commenters stated that the Department did not conduct a regulatory risk assessment as required for certain Departmental regulations under section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103–354. However, based on the statutory language and legislative intent, the Department determined that a regulatory risk assessment is not required for this regulation.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of the preamble of the interim rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with FNS Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of WIC Program applicants and participants, FNS has determined that it does not have a deleterious effect on the participation of protected individuals in the WIC Program. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local agencies operating the WIC Program from discrimination based on race, color, national origin, sex, age, or disability. Section 246.8(a) of WIC regulations requires State agencies to ensure that no person will be excluded from participation based on race, color,

national origin, age, sex or disability. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

This rule merely addresses revisions to the WIC food packages to bring them into line with the Dietary Guidelines for Americans [(1)] and current infant feeding recommendations from the American Academy of Pediatrics. Several provisions are specifically designed to better accommodate WIC's highly diverse population. This interim rule provides WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences, including allowing participants a broad selection of fruits and vegetables; tofu and soy-based beverage as substitutes for milk; participant choice for whole grains (including tortillas); and salmon and sardines as substitutions for tuna. This interim rule also makes provisions to better accommodate the special dietary needs of high-risk participants served in Food Package III, helping to protect the health and well-being of this nutritionally vulnerable subset of WIC participants.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. In the publication of the proposed rule on August 7, 2006, FNS solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. FNS received no public comments in response to this solicitation. On November 1, 2006, OMB filed comment in accordance with 5 CFR 1320.11(c), requiring FNS to review public comments in response to the proposed rule and address any such comments in the preamble of the final rule. As a result, FNS has submitted a new clearance package for OMB review and approval. These information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, FNS will publish separate action in the **Federal Register**.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

■ For reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.2:

■ a. Add new definitions of ''Cash-value voucher'' and ''Farmer'' in alphabetical order;

■ b. Amend the definitions of ''Compliance buy'', ''Employee fraud and abuse'', ''Participants'' and ''Proxy'' by removing the words ''food instruments'' and adding in their place the words ''food instruments or cash-value vouchers'';

■ c. Amend the definition ''Nutrition Services and Administration (NSA) Costs'' by removing the words ''food instruments'' and adding in their place the words ''food instruments and cash-value vouchers'';

■ d. Revise the definition of ''Participant violation'';

■ e. Revise the definition of ''Participation''; and

■ f. Amend the definition of ''WIC-eligible medical foods'' by removing the words ''with a diagnosed medical condition'' and adding in their place the words ''with a qualifying condition'', and by revising the second sentence.

The additions and revisions read as follows:

§ 246.2 Definitions.

* * * * *

Cash-value voucher means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables.

* * * * *

Farmer means an individual authorized by the State agency to sell eligible fruits and vegetables to participants at a farmers' market or roadside stands. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized.

* * * * *

Participant violation means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging cash-value vouchers, food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer or vendor staff; and dual participation.

Participation means the sum of:

(1) The number of persons who received supplemental foods or food instruments during the reporting period;

(2) The number of infants who did not receive supplemental foods or food instruments but whose breastfeeding mother received supplemental foods or food instruments during the report period; and

(3) The number of breastfeeding women who did not receive supplemental foods or food instruments but whose infant received supplemental foods or food instruments during the report period.

* * * * *

WIC-eligible medical foods * * * Such WIC-eligible medical foods must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme.* * *

■ 3. In § 246.4:

■ a. Revise paragraph (a)(11)(iii).

■ b. Amend paragraph (a)(14)(iii) by revising the heading and the first sentence;

■ c. Revise paragraph (a)(14)(vi);

■ d. Revise paragraph (a)(14)(xi);

■ e. Amend paragraph (a)(14)(xii) by removing the words ''food instrument'' wherever they appear and adding in their place the words ''food instrument and cash-value voucher'';

■ f. Amend paragraph (a)(21) by removing the words ''food instruments'' and adding in their place the words ''food instruments and cash-value vouchers''; and
■ g. Amend paragraph (a)(25)(iii) by removing the words ''food instruments'' and adding in their place the words ''food instruments, cash-value vouchers''.

The revisions read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(iii) Instructions concerning all food delivery operations performed at the local level, including the list of acceptable foods and their maximum monthly quantities as required by § 246.10(b)(1).

* * * * *

(14) * * *

(iii) *Vendor and farmer agreement.* A sample vendor and farmer, if applicable, agreement, including the sanction schedule, which may be incorporated as an attachment or, if the sanction schedule is in the State agency's regulations, through citation to the regulations. * * *

* * * * *

(vi) *Food instruments and cash-value vouchers.* A facsimile of the food instrument and cash-value voucher, if used, and a description of the system the State agency will use to account for the disposition of food instruments and cash value vouchers in accordance with § 246.12(q);

* * * * *

(xi) *Vendor and farmer training.* The procedures the State agency will use to train vendors in accordance with § 246.12(i) and farmers. State agencies that intend to delegate any aspect of training to a local agency, contractor, or vendor representative must describe the State agency supervision and instructions that will be provided to ensure the uniformity and quality of vendor training.

* * * * *

■ 4. In § 246.7:
■ a. Amend paragraphs (c)(2)(i) and (f)(2)(i) by removing the words ''food or food instruments'' and adding in their place the words '' food, cash-value vouchers or food instruments''; and
■ b. Revise paragraphs (f)(2)(iv), (h)(3)(i), (j)(3) and (j)(6).

The revisions read as follows:

§ 246.7 Certification of participants.

* * * * *

(f) * * *

(2) * * *

(iv) Each local agency using a retail purchase system shall issue a food instrument(s) and if applicable cash-value voucher(s) to the participant at the same time as notification of certification. Such food instrument(s) and cash-value vouchers shall provide benefits for the current month or the remaining portion thereof and shall be redeemable immediately upon receipt by the participant. Local agencies may mail the initial food instrument(s) and if applicable cash-value vouchers with the notification of certification to those participants who meet the criteria for the receipt of food instruments through the mail, as provided in § 246.12(r)(4).

* * * * *

(h) * * *

(3) * * *

(i) A State agency may allow local agencies to disqualify a participant for failure to obtain food instruments, cash-value vouchers or supplemental foods for several consecutive months. As specified by the State agency, proof of such failure includes failure to pick up supplemental foods, cash-value vouchers or food instruments, nonreceipt of food instruments or cash-value vouchers (when mailed instruments or vouchers are returned), or failure to have an electronic benefit transfer card revalidated for purchase of supplemental foods; or

* * * * *

(j) * * *

(3) If the State agency implements the policy of disqualifying a participant for not picking up supplemental foods, cash-value vouchers or food instruments in accordance with paragraph (h)(3)(i) of this section, it shall provide notice of this policy and of the importance of regularly picking up cash-value vouchers, food instruments or supplemental foods to each participant, parent or caretaker at the time of each certification.

* * * * *

(6) A person who is about to be suspended or disqualified from program participation at any time during the certification period shall be advised in writing not less than 15 days before the suspension or disqualification. Such notification shall include the reasons for this action, and the participant's right to a fair hearing. Further, such notification need not be provided to persons who will be disqualified for not picking up cash-value vouchers, supplemental foods or food instruments in accordance with paragraph (h)(3)(i) of this section.

* * * * *

■ 5. Revise § 246.10 to read as follows:

§ 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants. The State agency must ensure that local agencies comply with this section.

(b) *State agency responsibilities.* (1) State agencies may:

(i) Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section, except that the State agency may not establish further restrictions on the eligible fruits and vegetables, for the supplemental foods in their States. These State criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal; and

(ii) Make food package adjustments to better accommodate participants who are homeless. At the State agency's option, these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities.

(2) State agencies must:

(i) Identify the brands of foods and package sizes that are acceptable for use in the Program in their States in accordance with the requirements of this section. State agencies must also provide to local agencies, and include in the State Plan, a list of acceptable foods and their maximum monthly allowances as specified in Tables 1 through 4 of paragraphs (e)(9) through (e)(12) of this section; and

(ii) Ensure that local agencies:

(A) Make available to participants the maximum monthly allowances of authorized supplemental foods, except as noted in paragraph (c) of this section, and abide by the authorized substitution rates for WIC food substitutions as specified in Tables 1 through 3 of paragraphs (e)(9) through (e)(11) of this section;

(B) Make available to participants more than one food from each WIC food category except for the categories of peanut butter and eggs, and any of the WIC-eligible fruits and vegetables (fresh or processed) in each authorized food package as listed in paragraph (e) of this section;

(C) Authorize only a competent professional authority to prescribe the categories of authorized supplemental foods in quantities that do not exceed the regulatory maximum and are appropriate for the participant, taking into consideration the participant's age and nutritional needs; and

(D) Advise participants or their caretaker, when appropriate, that the supplemental foods issued are only for their personal use. However, the supplemental foods are not authorized for participant use while hospitalized

on an in-patient basis. In addition, consistent with § 246.7(m)(1)(i)(B), supplemental foods are not authorized for use in the preparation of meals served in a communal food service. This restriction does not preclude the provision or use of supplemental foods for individual participants in a nonresidential setting (e.g., child care facility, family day care home, school, or other educational program); a homeless facility that meets the requirements of § 246.7(m)(1); or, at the State agency's discretion, a residential institution (e.g., home for pregnant teens, prison, or residential drug treatment center) that meets the requirements currently set forth in § 246.7(m)(1) and (m)(2).

(c) *Nutrition tailoring.* The full maximum monthly allowances of all supplemental foods in all food packages must be made available to participants if medically or nutritionally warranted. Reductions in these amounts cannot be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. Reductions in these amounts cannot be made for categories, groups or subgroups of WIC participants. The provision of less than the maximum monthly allowances of supplemental foods to an individual WIC participant in all food packages is appropriate only when:

(1) Medically or nutritionally warranted (e.g., to eliminate a food due to a food allergy);

(2) A participant refuses or cannot use the maximum monthly allowances; or

(3) The quantities necessary to supplement another programs' contribution to fill a medical prescription would be less than the maximum monthly allowances.

(d) *Medical documentation*—(1) *Supplemental foods requiring medical documentation.* Medical documentation is required for the issuance of the following supplemental foods:

(i) Any non-contract brand infant formula;

(ii) Any infant formula prescribed to a child or adult who receives Food Package III;

(iii) Any exempt infant formula;

(iv) Any WIC-eligible medical food;

(v) Any authorized supplemental food issued to participants who receive Food Package III;

(vi) Any authorized soy-based beverage or tofu issued to children who receive Food Package IV;

(vii) Any additional authorized cheese issued to children who receive Food Package IV that exceeds the maximum substitution rate;

(viii) Any additional authorized tofu and cheese issued to women who receive Food Packages V and VII that exceeds the maximum substitution rate; and

(ix) Any contract brand infant formula that does not meet the requirements in Table 4 of paragraph (e)(12) of this section.

(2) *Supplemental foods not requiring medical documentation.* (i) State agencies may authorize local agencies to issue a non-contract brand infant formula that meets the requirements in Table 4 of paragraph (e)(12) of this section without medical documentation in order to meet religious eating patterns; and

(ii) The State agency has the discretion to require medical documentation for any contract brand infant formula and may decide that some contract brand infant formula may not be issued under any circumstances.

(3) *Medical Determination.* For purposes of this program, medical documentation means that a health care professional licensed to write medical prescriptions under State law has:

(i) Made a medical determination that the participant has a qualifying condition as described in paragraphs (e)(3) through (e)(7) of this section that dictates the use of the supplemental foods, as described in paragraph (d)(1) of this section; and

(ii) Provided the written documentation that meets the technical requirements described in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

(4) *Technical Requirements*—(i) *Location.* All medical documentation must be kept on file (electronic or hard copy) at the local clinic. The medical documentation kept on file must include the initial telephone documentation, when received as described in paragraph (d)(4)(iii)(B) of this section.

(ii) *Content.* All medical documentation must include the following:

(A) The name of the authorized WIC formula (infant formula, exempt infant formula, WIC-eligible medical food) prescribed, including amount needed per day;

(B) The authorized supplemental food(s) appropriate for the qualifying condition(s) and their prescribed amounts;

(C) Length of time the prescribed WIC formula and/or supplemental food is required by the participant;

(D) The qualifying condition(s) for issuance of the authorized supplemental food(s) requiring medical documentation, as described in paragraphs (e)(3) through (e)(7) of this section; and

(E) Signature, date and contact information (or name, date and contact information), if the initial medical documentation was received by telephone and the signed document is forthcoming, of the health care professional licensed by the State to write prescriptions in accordance with State laws.

(iii) *Written confirmation*—(A) *General.* Medical documentation must be written and may be provided as an original written document, an electronic document, by facsimile or by telephone to a competent professional authority until written confirmation is received.

(B) *Medical documentation provided by telephone.* Medical documentation may be provided by telephone to a competent professional authority who must promptly document the information. The collection of the required information by telephone for medical documentation purposes may only be used until written confirmation is received from a health care professional licensed to write medical prescriptions and used only when absolutely necessary on an individual participant basis. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time (*i.e.*, one or two week's time) after accepting the initial medical documentation by telephone.

(5) *Medical supervision requirements.* Due to the nature of the health conditions of participants who are issued supplemental foods that require medical documentation, close medical supervision is essential for each participant's dietary management. The responsibility remains with the participant's health care provider for this medical oversight and instruction. This responsibility cannot be assumed by personnel at the WIC State or local agency. However, it would be the responsibility of the WIC competent professional authority to ensure that only the amounts of supplemental foods prescribed by the participant's health care provider are issued in the participant's food package.

(e) *Food packages.* There are seven food packages available under the Program that may be provided to participants. The authorized supplemental foods must be prescribed from food packages according to the category and nutritional needs of the participant. The food packages are as follows:

(1) *Food Package I—Infants birth through 5 months*—(i) *Participant category served.* This food package is designed for issuance to infant participants from birth through age 5

months who do not have a condition qualifying them to receive Food Package III.

(ii) *Infant feeding categories*—(A) *Birth to one month.* Three infant feeding options are available during the first month after birth—fully breastfeeding, i.e., the infant receives no infant formula from the WIC Program; partially breastfeeding, *i.e.*, the infant receives not more than 104 reconstituted fluid ounces of formula; or fully formula-feeding. Infant formula is not provided during the first month after birth to fully breastfed infants to support the successful establishment of breastfeeding.

(B) *One through 5 months.* Three infant feeding options are available from 1 months through 5 months—fully breastfeeding, fully formula-feeding, or partially breastfeeding, *i.e.*, the infant is breastfed but also receives infant formula from the WIC Program in an amount not to exceed approximately half the amount of infant formula allowed for a fully formula fed infant.

(iii) *Infant formula requirements.* This food package provides iron-fortified infant formula that is not an exempt infant formula. The issuance of any contract brand or noncontract brand infant formula that contains less than 10 milligrams of iron per liter at standard dilution (*i.e.*, approximately 20 kilocalories per fluid ounce of prepared formula) is prohibited. Except as specified in paragraph (d) of this section, local agencies must issue a contract brand infant formula that meets the requirements in Table 4 of paragraph (e)(12) of this section.

(iv) *Physical forms.* Local agencies must issue all WIC formulas (WIC formulas mean all infant formula, exempt infant formula and WIC-eligible medical foods) in concentrated liquid or powder physical forms. Ready-to-feed WIC formulas may be authorized when the competent professional authority determines and documents that:

(A) The participant's household has an unsanitary or restricted water supply or poor refrigeration;

(B) The person caring for the participant may have difficulty in correctly diluting concentrated or powder forms; or

(C) The WIC infant formula is only available in ready-to-feed.

(v) *Authorized category of supplemental foods.* Infant formula is the only category of supplemental foods authorized in this food package. Exempt infant formulas and WIC-eligible medical foods are authorized only in Food Package III.

(2) *Food Package II—Infants 6 through 11 months*—(i) *Participant category served.* This food package is designed for issuance to infant participants from 6 through 11 months of age who do not have a condition qualifying them to receive Food Package III.

(ii) *Infant feeding options.* Three infant feeding options are available—fully breastfeeding, fully formula-feeding, or partially breastfeeding.

(iii) *Infant formula requirements.* The requirements for issuance of infant formula in Food Package I, specified in paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, also apply to the issuance of infant formula in Food Package II.

(iv) *Authorized categories of supplemental foods.* Infant formula, infant fruits and vegetables, infant meat, and infant cereal are the categories of supplemental foods authorized in this food package.

(3) *Food Package III—Participants with qualifying conditions*—(i) *Participant category served and qualifying conditions.* This food package is reserved for issuance to women, infants and child participants who have a documented qualifying condition that requires the use of a WIC formula (infant formula, exempt infant formula or WIC-eligible medical food) because the use of conventional foods is precluded, restricted, or inadequate to address their special nutritional needs. Medical documentation must meet the requirements described in paragraph (d) of this section. Participants who are eligible to receive this food package must have one or more qualifying conditions, as determined by a health care professional licensed to write medical prescriptions under State law. The qualifying conditions include but are not limited to premature birth, low birth weight, failure to thrive, inborn errors of metabolism and metabolic disorders, gastrointestinal disorders, malabsorption syndromes, immune system disorders, severe food allergies that require an elemental formula, and life threatening disorders, diseases and medical conditions that impair ingestion, digestion, absorption or the utilization of nutrients that could adversely affect the participant's nutrition status. This food package may not be issued solely for the purpose of enhancing nutrient intake or managing body weight.

(ii) *Non-authorized issuance of Food Package III.* This food package is not authorized for:

(A) Infants whose only condition is:

(*1*) A diagnosed formula intolerance or food allergy to lactose, sucrose, milk protein or soy protein that does not require the use of an exempt infant formula; or

(*2*) A non-specific formula or food intolerance.

(B) Women and children who have a food intolerance to lactose or milk protein that can be successfully managed with the use of one of the other WIC food packages (*i.e.*, Food Packages IV–VII); or

(C) Any participant solely for the purpose of enhancing nutrient intake or managing body weight without an underlying qualifying condition.

(iii) *Restrictions on the issuance of WIC formulas in ready-to-feed (RTF) forms.* WIC State agencies must issue WIC formulas (infant formula, exempt infant formula and WIC-eligible medical foods) in concentrated liquid or powder physical forms unless the requirements for issuing RTF are met as described in paragraph (e)(1)(iv) of this section. In addition to those requirements, there are two additional conditions which may be used to issue RTF in Food Package III:

(A) If a ready-to-feed form better accommodates the participant's condition; or

(B) If it improves the participant's compliance in consuming the prescribed WIC formula.

(iv) *Unauthorized WIC costs.* All apparatus or devices (*e.g.*, enteral feeding tubes, bags and pumps) designed to administer WIC formulas are not allowable WIC costs.

(v) *Authorized categories of supplemental foods.* The supplemental foods authorized in this food package require medical documentation for issuance and include infant formula (for children or women), exempt infant formula, WIC-eligible medical foods, infant cereal, infant food fruits and vegetables, milk and milk alternatives, cheese, eggs, canned fish, fruits and vegetables, breakfast cereal, whole wheat bread or other whole grains, juice, legumes and/or peanut butter.

(vi) *Coordination with medical payors and other programs that provide or reimburse for formulas.* WIC State agencies must coordinate with other Federal, State or local government agencies or with private agencies that operate programs that also provide or could reimburse for exempt infant formulas and WIC-eligible medical foods benefits to mutual participants. At a minimum, a WIC State agency must coordinate with the State Medicaid Program for the provision of exempt infant formulas and WIC-eligible medical foods that are authorized or could be authorized under the State Medicaid Program for reimbursement and that are prescribed for WIC participants who are also Medicaid recipients. The WIC State agency is responsible for providing up to the

maximum amount of exempt infant formulas and WIC-eligible medical foods under Food Package III in situations where reimbursement is not provided by another entity.

(4) *Food Package IV—Children 1 through 4 years*—(i) *Participant category served.* This food package is designed for issuance to participants 1 through 4 years of age who do not have a condition qualifying them to receive Food Package III.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, and legumes or peanut butter are the categories of supplemental foods authorized in this food package. Cheese may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Substitutions exceeding the maximum substitution allowance of cheese, up to the maximum allowance for fluid milk, may be allowed with medical documentation of the qualifying condition. Soy-based beverage and tofu can be substituted for milk only with medical documentation in this food package, in amounts described in Table 2 of paragraph (e)(10) of this section. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a child cannot drink milk and requires soy-based beverage, tofu, or additional cheese as a substitute for milk. Such determination can be made for situations that include, but are not limited to, milk allergy, severe lactose maldigestion, and vegan diets. Medical documentation must meet the requirements described in paragraph (d) of this section.

(5) *Food Package V—Pregnant and partially breastfeeding women*—(i) *Participant category served.* This food package is designed for issuance to women participants with singleton pregnancies who do not have a condition qualifying them to receive Food Package III. This food package is also designed for issuance to breastfeeding women participants, up to 1 year postpartum, who do not have a condition qualifying them to receive Food Package III and whose partially breastfed infants receive formula from the WIC program in amounts that do not exceed the maximum allowances described in Table 1 of paragraph (e)(9) of this section. Women participants breastfeeding more than one infant, and women participants pregnant with more than one fetus, are eligible to receive Food Package VII as described in paragraph (e)(7) of this section.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, legumes and peanut butter are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(6) *Food Package VI—Postpartum women*—(i) *Participant category served.* This food package is designed for issuance to women up to 6 months postpartum who are not breastfeeding their infants, and to breastfeeding women up to 6 months postpartum whose participating infant receives more than the maximum amount of formula allowed for partially breastfed infants as described in Table 1 of paragraph (e)(9) of this section.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, eggs, and legumes or peanut butter are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(7) *Food Package VII—Fully breastfeeding*—(i) *Participant category served.* This food package is designed for issuance to breastfeeding women up to 1 year postpartum whose infants do not receive infant formula from WIC (these breastfeeding women are assumed to be fully breastfeeding their infants). This food package is also designed for issuance to women participants pregnant with two or more fetuses, and women participants partially breastfeeding multiple infants. Women participants fully breastfeeding multiple infants receive 1.5 times the supplemental foods provided in Food Package VII.

(ii) *Authorized categories of supplemental foods.* Milk, cheese, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, legumes, peanut butter, and canned fish are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(8) *Supplemental Foods—Maximum monthly allowances, options and substitution rates, and minimum requirements.* Tables 1 through 3 of paragraphs (e)(9) through (e)(11) of this section specify the maximum monthly allowances of foods in WIC food packages and identify WIC food options and substitution rates. Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications of supplemental foods in the WIC food packages.

(9) *Maximum monthly allowances of supplemental foods for infants.* The maximum monthly allowances, options and substitution rates of supplemental foods for infants in Food Packages I, II and III are stated in Table 1 as follows:

TABLE 1.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR INFANTS IN FOOD PACKAGES I, II AND III

	Fully formula fed (FF)		Partially breastfed (BF/FF)		Fully breastfed (BF)	
Foods [1]	Food packages I-FF & III-FF A: 0 through 3 months B: 4 through 5 months	Food packages II-FF & III-FF 6 through 11 months	Food packages I-BF/FF & III BF/FF A: 0 to 1 month [2] B: 1 through 3 months [2] C: 4 through 5 months	Food packages II-BF/FF & III BF/FF through 11 months	Food package I-BF 0 through 5 months	Food package II-BF 6 through 11 months
WIC Formula [4 5 6 7] ..	A: 806 fl oz reconstituted liquid concentrate or 832 fl oz RTF or 870 fl oz reconstituted powder. B: 884 fl oz reconstituted liquid concentrate or 896 fl oz RTF or 960 fl oz reconstituted powder.	624 fl oz reconstituted liquid concentrate or 640 fl oz RTF or 696 fl oz reconstituted powder	A: 104 fl oz reconstituted powder [3] B: 364 fl oz reconstituted liquid concentrate or 384 fl oz RTF or 435 fl oz reconstituted powder C: 442 fl oz reconstituted liquid concentrate or 448 fl oz RTF or 522 fl oz reconstituted powder	312 fl oz reconstituted liquid concentrate or 320 fl oz RTF or 384 fl oz reconstituted powder		
Infant cereal [8]	.....	24 oz	.....	24 oz	.....	24 oz.
Infant food fruits and vegetables [8 9 10].	.....	128 oz	.....	128 oz	.....	256 oz.
Infant food—meat [8 10].	.....	.....	.....	.....	.....	77.5 oz.

Table 1 Footnotes: (abbreviations in order of appearance in table): FF = fully formula fed; BF/FF = partially breastfed (i.e., the infant is breastfed but also receives formula from the WIC Program); BF = fully breastfed (i.e., the infant receives no formula through the WIC program).

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] The powder form is the form recommended for partially breastfed infants ages 0 through 3 months in Food Package I.

[3] Liquid concentrate and ready-to-feed (RTF) may be substituted at rates that provide comparable nutritive value.

[4] WIC formula means infant formula, exempt infant formula, or WIC-eligible medical food. Only infant formula may be issued for infants in Food Packages I and II. Exempt infant formula may only be issued for infants in Food Package III.

[5] The maximum monthly allowance is specified in reconstituted fluid ounces for liquid concentrate, RTF liquid, and powder forms of infant formula and exempt infant formula. Reconstituted fluid ounce is the form prepared for consumption as directed on the container.

[6] If powder infant formula is provided, State agencies must provide at least the number of reconstituted fluid ounces as the maximum allowance for the liquid concentrate form of the same product in the same Food Package up to the maximum monthly allowance for powder. State agencies must issue whole containers that are all the same size.

[7] State agencies may round up and disperse whole containers of infant formula over the food package timeframe to allow participants to receive the full authorized nutritional benefit (FNB). State agencies must use the methodology described in accordance with paragraph (h)(1) of this section.

[8] State agencies may round up and disperse whole containers of infant foods (infant cereal, fruits and vegetables, and meat) over the Food Package timeframe. State agencies must use the methodology described in accordance with paragraph (h)(2) of this section.

[9] Fresh banana may replace up to 16 ounces of infant food fruit at a rate of 1 pound of bananas per 8 ounces of infant food fruit.

[10] In lieu of infant foods (cereal, fruit and vegetables, and meat), infants greater than 6 months of age in Food Package III may receive exempt infant formula or WIC-eligible medical foods at the same maximum monthly allowance as infants ages 4 through 5 months of age of the same feeding option.

(10) *Maximum monthly allowances of supplemental foods in Food Packages IV through VII.* The maximum monthly allowances, options and substitution rates of supplemental foods for children and women in Food Package IV through VII are stated in Table 2 as follows:

TABLE 2.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII

	Children	Women		
Foods [1]	Food package IV 1 through 4 years	Food package V: Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Food package VI: Postpartum (up to 6 months postpartum) [3]	Food package VII: Fully breastfeeding (up to 1 year post-partum) [4 5]
Juice, single strength [6]	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
Milk, fluid	16 qt [7 8 9 10]	22 qt. [7 8 11 12]	16 qt. [7 8 11 12]	24 qt. [7 8 11 12]
Breakfast cereal [13]	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.
Fruits and vegetables [14 15]	$6.00 in cash value vouchers.	$8.00 in cash-value vouchers.	$8.00 in cash-value vouchers.	$10.00 in cash-value vouchers.
Whole wheat bread or other whole grains [16].	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.

TABLE 2.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII—Continued

Foods [1]	Children	Women		
	Food package IV 1 through 4 years	Food package V: Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Food package VI: Postpartum (up to 6 months postpartum) [3]	Food package VII: Fully breastfeeding (up to 1 year post-partum) [4 5]
Legumes, dry [17]	1 lb	1 lb	1 lb	1 lb.
And/or peanut butter	Or 18 oz	And 18 oz	Or 18 oz	And 18 oz.

Table 2 Footnotes: N/A = the supplemental food is not authorized in the corresponding food package.

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] Food Package V is issued to two categories of WIC participants: Women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I-BF/FF-A, I-BF/FF-B, I-BF/FF-C, or II-BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[3] Food Package VI is issued to two categories of WIC participants: Non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum infant formula allowances for Food Packages I-BF/FF-A, I-BF/FF-B, I-BF/FF-C or II-BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[4] Food Package VII is issued to three categories of WIC participants: Fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

[5] Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

[6] Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

[7] Whole milk, as specified in FDA standards, is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks, as specified in FDA standards, i.e., 2% milk fat, are the only types of milk allowed for children ≥ 24 months of age and women.

[8] Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

[9] For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

[10] For children, soy-based beverage and calcium-set tofu may be substituted for milk only with medical documentation for qualifying conditions. Soy-based beverage may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

[11] For women, cheese or calcium-set tofu may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

[12] For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

[13] At least one-half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined in Table 4 of paragraph (e)(12) of this section.

[14] Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children in Food Package IV.

[15] The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

[16] Brown rice, bulgur (cracked wheat), oatmeal, whole-grain barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

[17] Canned legumes may be substituted for dried legumes at the rate of 64 oz. of canned beans for 1 lb. dried beans. Under Food Packages V and VII, two additional combinations of dry or canned beans/peas are authorized: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. peanut butter (and no beans).

(11) *Maximum monthly allowances of supplemental foods for children and women with qualifying conditions in Food Package III.* The maximum monthly allowances, options and substitution rates of supplemental foods for participants with qualifying conditions in Food Package III are stated in Table 3 as follows:

TABLE 3.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGE III

Foods [1]	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Postpartum (up to 6 months postpartum) [3]	Fully breastfeeding, (up to 1 year post-partum) [4 5]
Juice, single strength [6].	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
WIC Formula [7 8]	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz. liquid concentrate.
Milk	16 qt [9 10 11 12]	22 qt [9 10 13 14]	16 qt [9 10 13 14]	24 qt. [9 10 13 14]
Breakfast cereal [15 16].	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.

TABLE 3.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGE III—Continued

Foods[1]	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum)[2]	Postpartum (up to 6 months postpartum)[3]	Fully breastfeeding, (up to 1 year post-partum)[4 5]
Fruits and vegetables[17 18].	$6.00 in cash value vouchers.	$8.00 in cash value vouchers.	$8.00 in cash value vouchers.	$10.00 in cash value vouchers.
Whole wheat bread[19].	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry[20]	1 lb	1 lb	1 lb	1 lb.
and/or Peanut butter.	Or 18 oz	And 18 oz	Or 18 oz	And 18 oz.

Table 3 Footnotes: N/A=the supplemental food is not authorized in the corresponding food package.

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] Food Package V is issued to two categories of WIC participants—women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, I–BF/FF–C, or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[3] Food Package VI is issued to two categories of WIC participants—non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, I–BF/FF–C or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[4] Food Package VII is issued to three categories of WIC participants—fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

[5] Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

[6] Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

[7] WIC formula means infant formula, exempt infant formula, or WIC-eligible medical food.

[8] Powder and Ready-to-Feed may be substituted at rates that provide comparable nutritive value.

[9] Whole milk, as specified in FDA standards, is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks, as specified in FDA standards, i.e., 2% milk fat, are the only types of milk allowed for children > 24 months of age and women. With medical documentation, whole milk may be substituted for reduced fat milk for children > 24 months of age and women.

[10] Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

[11] For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

[12] For children, soy-based beverage and tofu may be substituted for milk only with medical documentation for qualifying conditions. Soy-based beverage may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

[13] For women, cheese or calcium-set tofu may be substituted for milk at the rate of l pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

[14] For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

[15] 32 dry ounces of infant cereal may be substituted for 36 ounces of breakfast cereal.

[16] At least one half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined in Table 4 of paragraph (e)(12) of this section.

[17] Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children.

[18] The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

[19] Brown rice, bulgur (cracked wheat), oatmeal, whole-grain barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

[20] Canned legumes may be substituted for dried legumes at the rate of 64 oz of canned beans for 1 lb dried beans. Issuance of two additional combinations of dry or canned beans/peas is authorized for the Pregnant and Partially Breastfeeding (up to 1 year postpartum) category and Fully Breastfeeding (Enhanced) (up to 1 year postpartum) category: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. Peanut butter (and no beans).

(12) *Minimum requirements and specifications for supplemental foods.* Table 4 describes the minimum requirements and specifications for supplemental foods in all food packages:

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS

Categories/foods	Minimum requirements and specifications
WIC formula:	
Infant formula	All authorized infant formulas must (1) meet the definition for an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107;

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
	(2) Be designed for enteral digestion via an oral or tube feeding; (3) Provide at least 10 mg iron per liter (at least 1.8 mg iron/100 kilocalories) at standard dilution; (4) Provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution. (5) Not require the addition of any ingredients other than water prior to being served in a liquid state.
Exempt infant formula	All authorized exempt infant formula must (1) meet the definition and requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 350a(h)) and the regulations at 21 CFR Parts 106 and 107; and 2) Be designed for enteral digestion via an oral or tube feeding.
WIC-eligible medical foods.[1]	Certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible medical foods must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible medical foods include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).
Milk and milk alternatives:	
Cow's milk	Must conform to FDA standard of identity for whole, reduced fat, low-fat, or non-fat milks (21 CFR 131.110). Must be pasteurized and contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup). May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dried (i.e., powder) (21 CFR 131.147).[2] Cultured Milks. Must conform to FDA standard of identity for cultured milk (21 CFR 131.112—cultured buttermilk, kefir cultured milk, acidophilus cultured milk).
Goat milk	Must conform to FDA standard of identity for whole, reduced fat, low-fat, or non-fat milks (21 CFR part 131). Must be pasteurized and contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup) following FDA fortification standards (21 CFR part 131). May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dried (i.e., powdered) (21 CFR 131.147).[2]
Cheese	Domestic cheese made from 100 percent pasteurized milk. Must conform to FDA standard of identity (21 CFR Part 133); Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized processed American, or blends of any of these cheeses are authorized. Cheeses that are labeled low, free, reduced, less or light in the nutrients of sodium, fat or cholesterol are WIC-eligible.[3]
Tofu	Calcium-set tofu prepared with only calcium salts (e.g., calcium sulfate). May not contain added fats, sugars, oils, or sodium.
Soy-based beverage	Must be fortified to meet the following nutrient levels: 276 mg calcium per cup, 8 g protein per cup, 500 IU vitamin A per cup, 100 IU vitamin D per cup, 24 mg magnesium per cup, 222 mg phosphorus per cup, 349 mg potassium per cup, 0.44 mg riboflavin per cup, and 1.1 mcg vitamin B12 per cup, in accordance with fortification guidelines issued by FDA.
Juice	Must be pasteurized 100% unsweetened fruit juice. Must conform to FDA standard of identity (21 CFR part 146) or vegetable juice must conform to FDA standard of identity (21 CFR part 156) and contain at least 30 mg of vitamin C per 100 mL of juice. With the exception of 100 percent citrus juices, State agencies must verify the vitamin C content of all State-approved juices. Juices that are fortified with other nutrients may be allowed at the State agency's option. Juice may be fresh, from concentrate, frozen, canned, or shelf-stable. Vegetable juice may be regular or lower in sodium.[3]
Eggs	Fresh shell domestic hens' eggs or dried eggs mix (must conform to FDA standard of identity in 21 CFR 160.105) or pasteurized liquid whole eggs (must conform to FDA standard of identity in 21 CFR 160.115). Hard boiled eggs, where readily available for purchase in small quantities, may be provided for homeless participants.
Breakfast cereal	Breakfast cereals as defined by FDA in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Must contain a minimum of 28 mg iron per 100 g dry cereal. Must contain ≤ 21.2 g sucrose and other sugars per 100 g dry cereal (≤ 6 g per dry oz). At least half of the cereals authorized on a State agency's food list must have whole grain as the primary ingredient by weight AND meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'':[4] (1) Contain a minimum of 51% whole grains (using dietary fiber as the indicator); (2) Meet the regulatory definitions for ''low saturated fat'' at 21 CFR 101.62 (≤ 1 g saturated fat per RACC) and ''low cholesterol'' (≤ 20 mg cholesterol per RACC); (3) Bear quantitative trans fat labeling; and (4) Contain ≤ 6.5 g total fat per RACC and ≤ 0.5 g trans fat per RACC.
Fruits and Vegetables (fresh and processed)	Any variety of fresh whole or cut fruit without added sugars.[5] Any variety of fresh whole or cut vegetable, except white potatoes, without added sugars, fats, or oils (orange yams and sweet potatoes are allowed).[5]

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
	Any variety of canned[6] fruits (must conform to FDA standard of identity (21 CFR part 145); including applesauce, juice pack or water pack without added sugars, fats, oils, or salt (i.e. sodium). Any variety of frozen fruits without added sugars.[7]
	Any variety of canned[6] or frozen vegetables (must conform to FDA standard of identity (21 CFR part 155)) except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, or oils. May be regular or lower in sodium.[3 thnsp;7]
	Any type of dried fruits or dried vegetable without added sugars, fats, oils, or salt (i.e., sodium).[5]
Whole wheat bread/Whole grain bread/Other whole unprocessed grains.	*Bread* *Whole wheat bread* must conform to FDA standard of identity (21 CFR 136.180). (Includes whole wheat buns and rolls.) AND Whole wheat must be the primary ingredient by weight in all whole wheat bread products. *Whole grain bread* must meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'':[4] (1) Contain a minimum of 51% whole grains (using dietary fiber as the indicator); (2) Meet the regulatory definitions for ''low saturated fat'' at 21 CFR 101.62 (≤ 1 g saturated fat per RACC) and ''low cholesterol'' (≤ 20 mg cholesterol per RACC); (3) Bear quantitative trans fat labeling; and (4) Contain ≤ 6.5 g total fat per RACC and ≤ 0.5 g trans fat per RACC. AND Whole grain must be the primary ingredient by weight in all whole grain bread products. *Other Whole Unprocessed Grains* Brown rice, bulgur (cracked wheat), oatmeal, and whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking. Soft corn or whole wheat tortillas may be allowed at the State agency's option. Whole grain must be the primary ingredient by weight.
Canned fish[6]	Canned only: Light tuna (must conform to FDA standard of identity (21 CFR 161.190)); Salmon (must conform to FDA standard of identity (21 CFR 161.170)); Sardines; Mackerel (N. Atlantic Scomber scombrus, or Chub Pacific Scomber japonicus); May be packed in water or oil. Pack may include bones or skin. May be regular or lower in sodium content.[3]
Mature legumes (dry beans and peas)	Any type of mature dry beans, peas, or lentils in dry-packaged or canned[6] forms. Examples include but are not limited to black beans (''turtle beans''), blackeye peas (cowpeas of the blackeye variety, ''cow beans''), garbanzo beans (chickpeas), great northern beans, kidney beans, lima beans (''butter beans''), navy beans, pinto beans, soybeans, split peas, and lentils. All categories exclude soups. May not contain added sugars, fats, oils or meat as purchased. Canned legumes may be regular or lower in sodium content.[3 thnsp;8] Baked beans may be provided for participants with limited cooking facilities.[8]
Peanut butter	Peanut butter and reduced fat peanut butter (must conform to FDA Standard of Identity (21 CFR 164.150)); creamy or chunky, regular or reduced fat, salted or unsalted[3] forms are allowed.
Infant Foods:	
Infant cereal	Infant cereal must contain a minimum of 45 mg of iron per 100 g of dry cereal.[9]
Infant fruits	Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced.[10]
Infant vegetables	Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced.[11]
Infant meat	Any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e. sodium) are not allowed. Texture may range from pureed through diced.[12]

Table 4 Footnotes: FDA = Food and Drug Administration of the U.S. Department of Health and Human Services; RACC = reference amount customarily consumed.

[1] The following are not considered a WIC eligible medical food: Formulas used solely for the purpose of enhancing nutrient intake, managing body weight, addressing picky eaters or used for a condition other than a qualifying condition (e.g., vitamin pills, weight control products, etc.); medicines or drugs, as defined by the Food, Drug and Cosmetic Act (21 U.S.C. 350a) as amended; enzymes, herbs, or botanicals; oral rehydration fluids or electrolyte solutions; flavoring or thickening agents; and feeding utensils or devices (e.g., feeding tubes, bags, pumps) designed to administer a WIC-eligible formula.

[2] All authorized milks must confirm to FDA, DHHS standards of identity for milks as defined by 21 CFR part 131 and meet WIC's requirements for vitamin fortification as stated above. Additional authorized milks include, but are not limited to: calcium-fortified, lactose-reduced and lactose-free, acidified, and UHT pasteurized milks. Other milks are permitted at the State agency's discretion provided that the State agency determines that the milk meets the minimum requirements for authorized milk.

[3] Any of the folowing lower sodium forms are allowable:

Sodium-free—less than 5 mg sodium per serving;

Very low sodium—35 mg sodium or less per serving or, if the serving is 30 g or less or 2 tablespoons or less, 35 mg sodium or less per 50 g of the food;

Low-sodium—140 mg sodium or less per serving or, if the serving is 30 g or less or 2 tablespoons or less, 140 mg sodium or less per 50 g of the food;

Light in sodium—at least 50 percent less sodium per serving than average reference amount for same food with no sodium reduction;

Lightly salted—at least 50 percent less sodium per serving than reference amount (If the food is not ''low in sodium,'' the statement ''not a low-sodium food'' must appear on the same panel as the Nutrition Facts panel.); and

Reduced or less sodium—at least 25 percent less sodium per serving than reference food.

[4] Food and Drug Administration (FDA), *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/~dms/flgrain2.html*

[5] Herbs or spices; edible blossoms and flowers, e.g., squash blossoms (broccoli, cauliflower and artichokes are allowed); creamed or sauced vegetables; vegetable-grain (pasta or rice) mixtures; fruit-nut mixtures; breaded vegetables; fruits and vegetables for purchase on salad bars; peanuts; ornamental and decorative fruits and vegetables such as chili peppers on a string; garlic on a string; gourds; painted pumpkins; fruit baskets and party vegetable trays; and items such as blueberry muffins and other baked goods are not authorized. Mature legumes (dry beans and peas) and juices are provided as separate food WIC categories and are not authorized under the fruit and vegetable category.

[6] ''Canned'' refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

[7] Excludes white potatoes; catsup or other condiments; pickled vegetables, olives; soups; juices; and fruit leathers and fruit roll-ups.

[8] The following canned mature legumes are not authorized: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, orange beans, and wax beans; baked beans with meat; e.g., beans and franks; and beans containing added sugars (with the exception of baked beans), fats, meat, or oils.

[9] Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.

[10] Mixtures with cereal or infant food desserts (e.g., peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) are allowed.

[11] Combinations of single ingredients (e.g., peas and carrots) are allowed.

[12] No infant food combinations (e.g., meat and vegetables) or dinners (e.g., spaghetti and meatballs) are allowed.

(f) *USDA purchase of commodity foods.* (1) At the request of a State agency, FNS may purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency must be equivalent to the foods specified in Table 4 of paragraph (e)(12) of this section.

(2) The State agency must:

(i) Distribute the commodity foods to its local agencies or participants; and

(ii) Ensure satisfactory storage facilities and conditions for the commodity foods, including documentation of proper insurance.

(g) *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program must be registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Such manufacturers wishing to bid for a State contract to supply infant formula to the program must certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act.

(h) *Rounding up.* State agencies may round up to the next whole container for either infant formula or infant foods (infant cereal, fruits, vegetables and meat). State agencies that use the rounding up option must calculate the amount of infant formula or infant foods provided according to the requirements and methodology as described in this section.

(1) *Infant Formula.* State agencies must use the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula as specified in Table 1 of paragraph (e)(9) of this section as the full nutritional benefit (FNB) provided by infant formula for each food package category and infant feeding option (e.g., Food Package I A fully formula fed, IA–FF).

(i) For State agencies that use rounding up of infant formula, the FNB is determined over the timeframe (the number of months) that the participant receives the food package. In any given month of the timeframe, the monthly issuance of reconstituted fluid ounces of infant formula may exceed the maximum monthly allowance or fall below the FNB; however, the cumulative average over the timeframe may not fall below the FNB. In addition, the State agency must:

(A) Use the methodology described in paragraph (h)(1)(ii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant formula in whole containers that are all the same size; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe with the largest monthly issuances given in the beginning of the timeframe.

(ii) The methodology to calculate rounding up and dispersing infant formula to the next whole container over the food package timeframe is as follows:

(A) Multiply the FNB amount for the appropriate food package and feeding option (e.g. Food Package I A fully formula fed, IA–FF) by the timeframe the participant will receive the food package to determine the total amount of infant formula to be provided.

(B) Divide the total amount of infant formula to be provided by the yield of the container (in reconstituted fluid ounces) issued by the State agency to determine the total number of containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(2) *Infant foods.* (i) State agencies may use the rounding up option to the next whole container of infant food (infant cereal, fruits, vegetables and meats) when the maximum monthly allowance cannot be issued due to varying container sizes of authorized infant foods.

(ii) State agencies that use the rounding up option for infant foods must:

(A) Use the methodology described in paragraph (h)(2)(iii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant foods in whole containers; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe (the number of months the participant will receive the food package).

(iii) The methodology to round up and disperse infant food is as follows:

(A) Multiply the maximum monthly allowance for the infant food by the timeframe the participant will receive the food package to determine the total amount of food to be provided.

(B) Divide the total amount of food provided by the container size issued by the State agency (e.g., ounces) to determine the total number of food containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(i) *Plans for substitutions.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program to allow for different cultural eating patterns. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern and other information necessary for FNS to evaluate the plan as specified in paragraph (i)(2) of this section.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) The proposed substitute food must be widely available to participants in the areas where the substitute is intended to be used.

(iii) The cost of the substitute food must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS will make a determination on the proposed plan based on the evaluation criteria specified in paragraph (i)(2) of this section, as appropriate. The State agency shall substitute foods only after receiving the written approval of FNS.

■ 6. In § 246.12:

■ a. Revise the second sentence of paragraph (a)(1).

■ b. Amend paragraphs (e), (f)(2)(i), (f)(2)(ii), (f)(2)(iv), (h)(3)(ix), (k)(2), and (k)(3), by removing the words ''food instrument'' wherever they appear and adding in their place the words ''food instrument or cash-value voucher'';

■ c. Amend paragraphs (h)(3)(i), (h)(3)(xv), and (i)(2), by removing the words ''food instruments'' wherever they appear and adding in their place the words ''food instruments and cash-value vouchers'';

■ d. Amend paragraphs (l)(1)(i), (l)(1)(ii)(B), (l)(1)(iii)(A), (l)(1)(iii)(D), and (l)(1)(iii)(F), by removing the words ''food instruments'' wherever they appear and adding in their place the words ''food instruments or cash-value vouchers'';

■ e. Revise the heading of paragraph (f), paragraph (f)(1), paragraph (f)(2) introductory text, paragraphs (f)(2)(iii), (f)(3), (g)(3)(i), (h)(3)(ii), and (h)(3)(iv) through (h)(3)(vi), (h)(3)(x), and paragraphs (k)(1), (k)(5), and (o) through (s);

■ f. Amend paragraph (t) by removing the word ''vendor'' and adding in its place the words ''vendor, farmer''; and

■ g. Add a new paragraph (v).

The addition and revisions read as follows:

§ 246.12 Food delivery systems.

(a) * * *

(1) * * * The State agency may permit only authorized vendors and farmers, home food delivery contractors, and direct distribution sites to accept food instruments and cash-value vouchers.

* * * * *

(f) *Retail food delivery systems: Food instrument and cash-value voucher requirements*—(1) *General.* State agencies using retail food delivery systems must use food instruments and cash-value vouchers that comply with the requirements of paragraph (f)(2) of this section.

(2) *Printed food instruments and cash-value vouchers.* Each printed food instrument and cash-value voucher must clearly bear on its face the following information:

* * * * *

(iii) *Last date of use.* The last date on which the food instrument or cash-value vouchers may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used, except for the participant's first month of issuance, when it may be the end of the month or cycle for which the food instrument or cash-value voucher is valid. Rather than entering a specific last date of use on each instrument or cash-value voucher, all instruments or cash-value vouchers may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument or cash-value voucher may be used;

* * * * *

(3) *Vendor identification.* The State agency must implement procedures to ensure each food instrument and cash-value voucher submitted for redemption can be identified by the vendor or farmer that submitted the food instrument or cash-value voucher. Each vendor operated by a single business entity must be identified separately. The State agency may identify vendors by requiring that all authorized vendors stamp their names and/or enter a vendor identification number on all food instruments or cash-value vouchers prior to submitting them for redemption.

(g) * * *

(3) * * *

(i) *Minimum variety and quantity of supplemental foods.* The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized. These requirements include that the vendor stock at least two varieties of fruits, two varieties of vegetables, and at least one whole grain cereal authorized by the State agency. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant meets these minimums. The State agency may establish different minimums for different vendor peer groups.

* * * * *

(h) * * *

(3) * * *

(ii) *No substitutions, cash, credit, refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the food instrument and cash-value voucher. The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rainchecks) in exchange for food instruments or cash-value vouchers. The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its ''sell by,'' ''best if used by,'' or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.

* * * * *

(iv) *Time periods for transacting food instruments and cash-value vouchers.* The vendor may accept a food instrument or cash-value voucher only within the specified time period.

(v) *Purchase price on food instruments and cash-value vouchers.* The vendor must ensure that the purchase price is entered on food instruments and cash-value vouchers in accordance with the procedures described in the vendor agreement. The State agency has the discretion to determine whether the vendor or the participant enters the purchase price. The purchase price must include only the authorized supplemental food items actually provided and must be entered on the food instrument or cash-value voucher before it is signed.

(vi) *Signature on food instruments and cash-value vouchers.* For printed food instruments and cash-value vouchers, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the food instrument or cash-value voucher in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

* * * * *

(x) *No charge for authorized supplemental foods or restitution from participants.* The vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments or cash-value vouchers. In addition, the vendor may not seek restitution from these individuals for food instruments or cash-value vouchers not paid or partially paid by the State agency. The

State agency may, however, allow participants, parents or caretakers of child participants to pay the difference when the purchase of authorized fruits and vegetables exceeds the value of the cash-value voucher.

* * * * *

(k) * * *

(1) *System to review food instruments and cash-value vouchers for vendor claims.* The State agency must design and implement a system to review food instruments and cash-value vouchers submitted by vendors for redemption to ensure compliance with the applicable price limitations and to detect questionable food instruments or cash-value vouchers, suspected vendor overcharges, and other errors. This review must examine either all or a representative sample of the food instruments and cash-value vouchers and may be done either before or after the State agency makes payments on the food instruments or cash-value vouchers. The review of food instruments must include a price comparison or other edit designed to ensure compliance with the applicable price limitations and to assist in detecting vendor overcharges. For printed food instruments and cash-value vouchers the system also must detect the following errors—purchase price missing; participant, parent/caretaker, or proxy signature missing; vendor identification missing; food instruments or cash-value vouchers transacted or redeemed after the specified time periods; and, as appropriate, altered purchase price. The State agency must take follow-up action within 120 days of detecting any questionable food instruments or cash-value vouchers, suspected vendor overcharges, and other errors and must implement procedures to reduce the number of errors when possible.

* * * * *

(5) *Food instruments and cash-value vouchers redeemed after the specified period.* With justification and documentation, the State agency may pay vendors for food instruments and cash-value vouchers submitted for redemption after the specified period for redemption. If the total value of such food instruments or cash-value vouchers submitted at one time exceeds $500.00, the State agency must obtain the approval of the FNS Regional Office before payment.

* * * * *

(o) *Participant, parent/caretaker, proxy, vendor, farmer and home food delivery contractor complaints.* The State agency must have procedures to document the handling of complaints by participants, parents or caretakers of infant or child participants, proxies, vendors, farmers, home food delivery contractors, and direct distribution contractors. Complaints of civil rights discrimination must be handled in accordance with § 246.8(b).

(p) *Food instrument and cash-value voucher security.* The State agency must develop standards for ensuring the security of food instruments and cash-value vouchers from the time the food instruments and cash-value vouchers are created to the time they are issued to participants, parents/caretakers, or proxies. For pre-printed food instruments or cash-value vouchers, these standards must include maintenance of perpetual inventory records of food instruments or cash-value vouchers throughout the State agency's jurisdiction; monthly physical inventory of food instruments or cash-value vouchers on hand throughout the State agency's jurisdiction; reconciliation of perpetual and physical inventories of food instruments and cash-value vouchers; and maintenance of all food instruments and cash-value vouchers under lock and key, except for supplies needed for immediate use. For EBT and print-on-demand food instruments and cash-value vouchers, the standards must provide for the accountability and security of the means to manufacture and issue such food instruments and cash-value vouchers.

(q) *Food instrument and cash-value voucher disposition.* The State agency must account for the disposition of all food instruments and cash-value vouchers as either issued or voided, and as either redeemed or unredeemed. Redeemed food instruments and cash-value vouchers must be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid enrollment and issuance records. In an EBT system, evidence of matching redeemed food instruments to valid enrollment and issuance records may be satisfied through the linking of the Primary Account Number (PAN) associated with the electronic transaction to valid enrollment and issuance records. This process must be performed within 120 days of the first valid date for participant use of the food instruments and must be conducted in accordance with the financial management requirements of § 246.13. The State agency will be subject to claims as outlined in § 246.23(a)(4) for redeemed food instruments or cash-value vouchers that do not meet the conditions established in paragraph (q) of this section.

(r) *Issuance of food instruments, cash-value vouchers and authorized supplemental foods.* The State agency must:

(1) *Parents/caretakers and proxies.* Establish uniform procedures that allow parents and caretakers of infant and child participants and proxies to obtain and transact food instruments and cash-value vouchers or obtain authorized supplemental foods on behalf of a participant. In determining whether a particular participant or parent/caretaker should be allowed to designate a proxy or proxies, the State agency must require the local agency or clinic to consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant or, in the case of an infant or child participant, to the participant's parent or caretaker;

(2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments, cash-value vouchers or authorized supplemental foods, except as provided in paragraph (r)(4) of this section;

(3) *Instructions.* Ensure that participants, parents or caretakers of infant and child participants, and proxies receive instructions on the proper use of food instruments and cash-value vouchers, or on the procedures for obtaining authorized supplemental foods when food instruments or cash-value vouchers are not used. The State agency must also ensure that participants, parents or caretakers of infant and child participants, and proxies are notified that they have the right to complain about improper vendor, farmer and home food delivery contractor practices with regard to program responsibilities;

(4) *Food instrument and cash-value voucher pick up.* Require participants, parents and caretakers of infant and child participants, and proxies to pick up food instruments and cash-value vouchers in person when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance through an alternative means such as EBT or mailing, unless FNS determines that such actions would jeopardize the integrity of program services or program accountability. If a State agency opts to mail food instruments and cash-value vouchers, it must provide justification, as part of its alternative issuance system in its State Plan, as required in § 246.4(a)(21), for mailing food instruments and cash-value voucher to areas where food stamps are not mailed. State agencies that opt to mail food

instruments and cash-value vouchers must establish and implement a system that ensures the return of food instruments and cash-value vouchers to the State or local agency if a participant no longer resides or receives mail at the address to which the food instruments and cash-value vouchers were mailed; and

(5) *Maximum issuance of food instruments and cash-value voucher.* Ensure that no more than a three-month supply of food instruments and cash-value vouchers or a one-month supply of authorized supplemental foods is issued at any one time to any participant, parent or caretaker of an infant or child participant, or proxy.

(s) *Payment to vendors, farmers and home food delivery contractors.* The State agency must ensure that vendors, farmers and home food delivery contractors are paid promptly. Payment must be made within 60 days after valid food instruments or cash-value vouchers are submitted for redemption. Actual payment to vendors, farmers and home food delivery contractors may be made by local agencies.

* * * * *

(v) *Farmers.* The State agency may authorize farmers at farmers markets (or roadside stands) to accept the cash-value voucher for eligible fruits and vegetables. The State agency must enter into written agreements with all authorized farmers. The agreement must be signed by a representative who has legal authority to obligate the farmer and a representative of the State agency. The agreement must be for a period not to exceed three years. Only farmers authorized by the State agency may redeem the fruit and vegetable cash-value voucher. The State agency must require farmers to reapply at the expiration of their agreements and must provide farmers with not less than 15 days advance written notice of the expiration of the agreement.

(1) The agreement must include the following provisions, although the State agency may determine the exact wording. The farmer must:

(i) Assure that the cash-value voucher is redeemed only for eligible fruits and vegetables as defined by the State agency;

(ii) Provide eligible fruits and vegetables at the current price or less than the current price charged to other customers;

(iii) Accept the cash-value voucher within the dates of their validity and submit such vouchers for payment within the allowable time period established by the State agency;

(iv) Redeem the cash-value voucher in accordance with a procedure established by the State agency,

(v) Accept training on cash-value voucher procedures and provide training to any employees with cash-value voucher responsibilities on such procedures;

(vi) Agree to be monitored for compliance with program requirements, including both overt and covert monitoring;

(vii) Be accountable for actions of employees in the provision of authorized foods and related activities;

(viii) Pay the State agency for any cash-value vouchers transacted in violation of this agreement;

(ix) Offer WIC participants, parent or caretakers of child participants or proxies the same courtesies as other customers;

(x) Comply with the nondiscrimination provisions of USDA regulations as provided in § 248.7; and

(xi) Notify the State agency if any farmers' market ceases operation prior to the end of the authorization period.

(2) The farmer must not:

(i) Collect sales tax on cash-value voucher purchases;

(ii) Seek restitution from WIC participants, parent or caretakers of child participants or proxies for cash-value vouchers not paid or partially paid by the State agency;

(iii) Issue cash change for purchases that are in an amount less than the value of the cash-value voucher;

(3) Neither the State agency nor the farmer has an obligation to renew the agreement. Either the State agency or the farmer may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer for improperly redeemed cash-value vouchers and may demand refunds for payments already made on improperly redeemed vouchers.

(5) The State agency may disqualify a farmer for WIC Program abuse. The farmer has the right to appeal a denial of an application to participate, a disqualification, or a program sanction by the State agency. Expiration of an agreement with a farmer and claims actions under § 246.23, are not appealable.

(6) A farmer which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

■ 7. In § 246.16, add a new paragraph (j) to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(j) *Inflation adjustment of the fruit and vegetable voucher.* The monthly cash value of the fruit and vegetable voucher shall be adjusted annually for inflation. Adjustments are effective the first day of each fiscal year beginning on or after October 1, 2008. The inflation-adjusted value of the voucher shall be equal to a base value increased by a factor based on the Consumer Price Index for fresh fruits and vegetables, as provided in this section.

(1) *Adjustment year.* The adjustment year is the fiscal year that begins October 1 of the current calendar year.

(2) *Base value of the fruit and vegetable voucher.* The base value of the fruit and vegetable voucher is the monthly cash value of the voucher for fiscal year 2008. The base value equals:

(i) $6 for children;

(ii) $8 for pregnant and postpartum women; and

(iii) $10 for breastfeeding women.

(3) *Adjusted value of the fruit and vegetable voucher.* The adjusted value of the fruit and vegetable voucher is the cash value of the voucher for adjustment years beginning on or after October 1, 2008. The adjusted value is the base value increased by an amount equal to the base value of the fruit and vegetable voucher:

(i) Multiplied by the inflation adjustment described in paragraph (j)(4) of this section; and

(ii) Subject to rounding as described in paragraph (j)(5) of this section.

(4) *Inflation adjustment.* The inflation adjustment of the fruit and vegetable voucher shall equal the percentage (if any) by which the annual average value of the Consumer Price Index for fresh fruits and vegetables, computed from monthly values published by the Bureau of Labor Statistics, for the twelve months ending on March 31 of the fiscal year immediately prior to the adjustment year, exceeds the average of the monthly values of that index for the twelve months ending on March 31, 2007.

(5) *Rounding.* If any increase in the cash value of the voucher determined under paragraph (j)(3) of this section is not a multiple of $1, such increase shall be rounded to the next lowest multiple of $1. However, if the adjusted value of the voucher for the adjustment year, as determined under paragraph (j)(3) of this section, is lower than the adjusted value for the fiscal year immediately prior to the adjustment year, then the adjusted value of the voucher will remain unchanged from that immediate prior fiscal year.

■ 8. In § 246.18:

■ a. Amend paragraph (a)(1)(iii)(G) by removing the words ''food instrument''

and adding in their place the words ''food instrument or cash-value voucher'';
■ b. Add a new paragraph (a)(4);
■ c. Revise the introductory text of paragraph (b);
■ d. Amend paragraph (d) by removing the words ''local agency or a vendor'' and adding in their place the words ''local agency, farmer or vendor'';
■ e. Amend paragraph (e) by removing the words ''vendor or the local agency'' and adding in their place the words ''vendor, farmer or local agency''; and
■ f. Amend paragraph (f) by removing the words ''vendor or local agency'' wherever they appear and adding in their place the words ''vendor, farmer or local agency''.

The addition and revision read as follows:

§ 246.18 Administrative review of State agency actions.

(a) * * *

(4) *Farmer appeals*—(i) *Adverse Actions.* The State agency shall provide a hearing procedure whereby farmers adversely affected by certain actions of the State agency may appeal those actions. A farmer may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participation in the program. Expiration of an agreement is not subject to appeal.

(ii) *Effective date of adverse actions against farmers.* The State agency must make denials of authorization and disqualifications effective on the date of receipt of the notice of adverse action. The State agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the farmer receives the review decision.

(b) *Full administrative review procedures.* The State agency must develop procedures for a full administrative review of the adverse actions listed in paragraphs (a)(1)(i), (a)(3) and (a)(4) of this section. At a minimum, these procedures must provide the vendor, farmer or local agency with the following:

* * * * *

■ 9. In § 246.23, revise paragraph (a)(4) to read as follows:

§ 246.23 Claims and penalties.

(a) * * *

(4) FNS will establish a claim against any State agency that has not accounted for the disposition of all redeemed food instruments and cash-value vouchers and taken appropriate follow-up action on all redeemed food instruments and cash-value vouchers that cannot be matched against valid enrollment and issuance records, including cases that may involve fraud, unless the State agency has demonstrated to the satisfaction of FNS that it has:

(i) Made every reasonable effort to comply with this requirement;

(ii) Identified the reasons for its inability to account for the disposition of each redeemed food instrument or cash-value voucher; and

(iii) Provided assurances that, to the extent considered necessary by FNS, it will take appropriate actions to improve its procedures.

* * * * *

Dated: November 21, 2007.

Nancy Montanez Johner,

Under Secretary for Food, Nutrition and Consumer Services.

Appendix

Note: This appendix will not be published in the Code of Federal Regulations.

Regulatory Impact Analysis

7 CFR Part 246: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages

Interim Rule

Executive Summary

The WIC program addresses the supplemental nutritional needs of at-risk groups through the distribution of supplemental food packages, and a program of nutrition education that includes counseling, health and social service referrals, and breastfeeding promotion and support. WIC nutrition education provisions are governed by broad regulatory language that allows nutrition education provided to participants to respond to the supplemental nutrition needs of participants in light of changes in dietary and health research. In contrast, WIC supplemental food packages are defined very specifically in regulatory language. Consequently, as the population served by WIC has grown and become more diverse over the last 27 years and as food consumption habits have changed, the nutritional risks faced by participants have changed. Also, though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged.

The interim rule modifies regulations governing the WIC food packages to implement recommended changes based on the current supplemental nutritional needs of WIC participants and advances in nutrition science. Specifically, the interim rule: revises the maximum monthly allowances and minimum requirements for certain supplemental foods; revises the substitution rates for certain supplemental foods and allows additional foods as alternatives; revises age specifications for assignment to infant food packages; modifies food packages to promote breastfeeding; adds foods to children and women food packages; and, addresses general provisions that apply to all food packages. The revisions reflect recommendations made by the Institute of Medicine of the National Academies in its Report *WIC Food Packages: Time for a Change,* comments received on the Proposed Rule published in the **Federal Register** on August 7, 2006 (71 FR 44784), and certain administrative revisions found necessary by the Department.

The revisions also bring the WIC food packages in line with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics to: better promote and support the establishment of successful long-term breastfeeding; provide WIC participants with a wider variety of food; provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences; and, serve all participants with certain medical provisions under one food package to facilitate efficient management of participants with special dietary needs.

This impact analysis specifically addresses significant or substantial public comments and Department modifications from the provisions as initially proposed in the Proposed Rule. Unless otherwise stated, the provisions stated in the impact analysis for the Proposed Rule should be regarded as the basis for the impact analysis of the interim rule. Under the interim rule, revisions to the WIC food packages are cost-neutral to the Federal Government. Specifically, FNS estimates that the changes will decrease costs by $29.7 million over five years, a negligible amount relative to the program's annual cost of more than $5 billion.

While the additional program costs from the rule change are negligible, the changes in food packages that will result represent important improvements in the program's alignment with current dietary guidance, increase the variety and appropriateness of foods provided to clients, and better promote healthy eating behaviors. These benefits will improve the program relative to current rules for years to come.

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Title: 7 CFR Part 246: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages.

Action

A. Nature: Interim Rule.

B. Need: The WIC program addresses the supplemental nutritional needs of at-risk groups through the distribution of age and condition specific food packages, and a program of nutrition education that includes counseling, health and social service referrals, and breastfeeding promotion and support. WIC nutrition education provisions are governed by broad regulatory language that allows nutrition education provided to participants to respond to changes in dietary and health research. In contrast, WIC supplemental food packages are defined very specifically in the regulatory language. Consequently, as the population served by WIC has grown and become more diverse over the last 27 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. This rule is needed to implement recommended changes to the WIC food packages based on the current supplemental nutritional needs of WIC participants and advances in nutrition science.

C. Affected Parties: The program affected by this rule is the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The parties affected by this regulation are the USDA's Food and Nutrition Service (FNS), State and local agencies that administer the WIC Program, retail vendors, food producers and manufacturers, and WIC participants.

Effects

The following analysis describes the potential economic impact of the interim rule. This rule is needed due to changes in the population served by WIC, and advances in nutrition and knowledge about the supplemental nutritional needs of those served by WIC. The changes in this rule are significant to the costs or overall operations to the program. The potential effects of these changes are highlighted below.

A. Background

The WIC program was established in the 1970s to address the special supplemental nutritional needs of low-income pregnant and postpartum women, infants, and children up to age five who are determined to be at nutritional risk. Regulations governing the WIC program recognize a broad range of nutritionally related medical conditions for purposes of establishing program eligibility. These include anemia, low birth weight, chronic infections, overweight, underweight, and similar manifestations of poor nutrition suitable for direct measurement or diagnosis.[1] WIC regulations also recognize that personal medical histories, dietary patterns, and economic circumstances may put otherwise healthy women or children at nutritional risk. Certification may therefore be extended to women facing high-risk pregnancies, pregnant women or mothers who abuse alcohol or drugs, homeless women and children, and infants and children with congenital malformations or other medical conditions that may interfere with adequate nutrient intake or absorption.

WIC addresses the supplemental nutritional needs of at-risk groups through the distribution of age- and condition-specific food packages, and a program of nutrition education that includes counseling, health and social service referrals, and breastfeeding promotion and support. Supplemental foods are currently offered to WIC participants in one of seven packages designed for the special supplemental nutritional needs of the following sub-populations:

I. Infants under four months old
II. Infants from four to twelve months old
III. Children and women with special dietary needs
IV. Children from one to five years old
V. Pregnant and breastfeeding women
VI. Non-breastfeeding postpartum women
VII. Exclusively breastfeeding women

Inadequate nutrition was the prime motivating factor behind the enactment of the WIC program.[2] Nutrition research in the 1970s pointed to calcium, iron, high quality protein, and vitamins A and C as nutrients most likely to be lacking in the diets of low-income women, infants, and children. Current WIC food packages reflect that early research. Today's packages include some combination of: iron-fortified infant formulas, iron-fortified cereals, vitamin C rich juice, vitamin A and D fortified milk, eggs, cheese, dried beans or peas, peanut butter, tuna, and carrots. Other factors that contributed to the selection of these foods are their nutrient density, modest cost, wide availability, and broad acceptance by the WIC-eligible population.

WIC's nutrition education provisions are governed by broad regulatory language that seeks to promote ''proper nutrition,'' ''optimal use'' of WIC's supplemental foods, and appropriate advice concerning non-WIC foods.[3] Compliance with this regulatory mandate presumes that nutrition education will respond to the supplemental nutrition needs of participants based on advances in dietary and health research. The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) provides for provision of nutrition education to WIC participants that is consistent with the Dietary Guidelines for Americans.

The statute governing WIC directs the Secretary of Agriculture to prescribe supplemental food packages for the program.[4] As a result, the content of WIC food packages is defined with specificity in program regulations; the regulatory flexibility that characterizes WIC nutrition education does not extend to the prescription of individual food packages. The list of WIC-approved foods provides select, nutrient-rich foods; allowed substitutions provide only limited room for participant-specific food package tailoring.

The population served by the WIC program has grown in size and diversity over time and the frequency of nutritional risks faced by WIC participants have changed. White and Black participants represented 72% of the WIC population in 1992; by 2004, just 56% of WIC participants fell into one of those two racial/ethnic groups.[5] WIC's Hispanic population, itself a diverse group, has grown from the third largest to the largest over the same period. Greater ethnic diversity increases the demand for additional food options consistent with cultural preferences.

In addition, the nutritional risks faced by the low-income population of the 1970s have changed. Although inadequate intake of some nutrients remains a concern,[6] improved diets have reduced the prevalence of once relatively common deficiency diseases and

[1] 7 CFR 246.7(e).

[2] See 42 U.S.C. 1786(a).

[3] 7 CFR 246.11.

[4] 42 U.S.C. 1786(b)(14).

[5] U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition and Evaluation, WIC Participant and Program Characteristics 1992, Abt Associates. Alexandria, VA: 1994. U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition and Evaluation, WIC Participant and Program Characteristics 2004, Abt. Associates. Alexandria, VA: 2005. The program characteristics studies performed prior to 1992 did not include participant data from Alaska, Hawaii, Puerto Rico, or U.S. territories. The racial/ethnic breakdowns from those earlier reports should not be directly compared to the ones contained in reports from 1992 forward.

[6] National Academies, Institute of Medicine (IOM). *WIC Food Packages: Time for a Change,* Washington, DC: The National Academies Press, 2005. pp. 31, 64.

underweight in at-risk groups. A WIC program that now assists nearly eight million individuals monthly, including about half of the nation's infants,[7] supplements the diets of an at-risk population with the very types of iron-fortified, nutrient-dense foods associated with this changed health picture. WIC's current food packages, little modified since the 1970s, were appropriately designed to address the recognized nutritional priorities of that time. But today's WIC population, like the U.S. population as a whole, faces a reordered set of priorities. Excessive intakes of some nutrients, including saturated fat, and of food energy have taken a place among the nation's top public health concerns.[8] Other nutrients, including vitamin E, and fiber, have since been identified as lacking in the diets of WIC-eligible sub-populations.[9] While current WIC food packages continue to address important health risks of undernutrition, they do not target all identified inadequacies, and they may contribute to the risks associated with excessive intake of some nutrients.

Medical consequences of improper diets include fetal or infant lead toxicity tied to low calcium intake by pregnant and breastfeeding women, birth defects caused by inadequate folate consumption early in pregnancy, iron-deficiency anemia, and heart disease, diabetes, stroke, and cancer, all linked to obesity and excessive intake of saturated fat.[10] Adjustments to the WIC food packages that move individual consumption of these priority nutrients closer to Recommended Dietary Allowances (RDAs) and Adequate Intake (AIs) levels of the Institute of Medicine's Dietary Reference Intakes may reduce the nutrition-related medical health risks of WIC participants.

B. Summary of Rule and Benefits

FNS contracted with the National Academies' Institute of Medicine (IOM) in 2003 to assess the nutritional health profile of the current WIC population, and to recommend changes in the content of the program's food packages. The Proposed Rule largely reflected recommendations made by the National Academies' Institute of Medicine (IOM) in its Report *WIC Food Packages: Time for a Change,* with certain cost containment and administrative modification found necessary by the Department to ensure cost neutrality.

The Proposed Rule detailed the first comprehensive revisions to the WIC food packages since 1980. The revised food packages were developed to better reflect current nutrition science and dietary recommendations than do current food packages, without impacting overall program costs. Compared to current WIC packages, the proposal:

Provides greater consistency with the Dietary Guidelines for Americans. The interim rule adds fruits and vegetables, and whole grains to the packages for the first time. The revised packages include foods from each food group except oils and allow variety and choice within the groups. Reductions are made to the amounts provided for certain foods in the current packages in order to be more consistent with the amounts of these foods recommended in the 2005 Dietary Guidelines for Americans and WIC's role as a supplemental nutrition program.

Supports improved nutrient intakes. The interim rule adds additional foods and modifies amounts of current foods support overall improvement in nutrient consumption and reduction in the prevalence of inadequate or excessive nutrient intakes. Compared with the current food packages, the revised packages are estimated to provide greater amounts of nearly all the nutrients identified by the IOM as often lacking in the diets of the WIC-eligible population, such as iron, fiber, and vitamin E. The revised food packages for women and children also provide less saturated fat, cholesterol, total fat and sodium than the current packages.

Provides greater consistency with established dietary recommendations for infants and children under 2, including encouragement and support for breastfeeding. The revised infant food packages improve overall nutrient density compared to current packages while keeping caloric content the same or slightly lower. The revised packages change age specification for assignment as well as establish three feeding categories to better address current dietary recommendations of the American Academy of Pediatrics (AAP) and promote breastfeeding. The packages for breastfeeding infant-mother pairs are revised to provide stronger incentives for continued breastfeeding, including providing less formula to partially breastfed infants than current packages, and providing additional quantities/types of food for breastfeeding mothers. For older infants, the proposal delays the introduction of complementary foods, consistent with AAP, from four to six months of age and modifies formula amounts. Infant foods are added and juice eliminated in the packages for older infants in order to promote healthy dietary patterns.

Addresses Emerging Public Health Nutrition-Related Issues. The prevalence of overweight and obesity in adults, adolescents, and children have increased dramatically, with direct implications for WIC participants. For example, childhood overweight has been linked to adverse health outcomes including elevated blood pressure, hyperinsulinemia, glucose intolerance, type 2 diabetes, dyslipidemia, and other early risks for chronic disease. The addition of fruits and vegetables and the emphasis on whole grains are consistent with recommendations for food patterns that may contribute to a healthy body weight. Compared to the current food packages, the revised food packages provide less saturated fat and cholesterol than the current packages for women and children. In addition, the revised food packages are designed to encourage breastfeeding and thus may contribute to a reduced risk of overweight in children.

Provides Wide Appeal to Diverse Populations. The proposed additional foods are the foods most often requested over the years by a variety of stakeholders such as the National WIC Association, WIC participants, WIC State and local agencies, industry and health professionals, and would provide more participant choice and a wider variety of foods than the current food packages. The increased variety and choice will provide State agencies increased flexibility in prescribing culturally appropriate food packages.

The Proposed Rule was published in the **Federal Register** on August 7, 2006 (71 FR 44784), with a 90-day comment period. A total of 46,502 comment letters were received on the Proposed Rule; of those, 23,908 were form letters. Comments were submitted by a variety of stakeholders, including program participants, WIC State and local agencies and Indian Tribal Organizations, the National WIC Association, professional organizations and associations, advocacy groups, healthcare professionals (including universities), members of Congress, the food industry, vendors, farmers, and private citizens.

With few changes, the provisions in the Proposed Rule have been adopted as this interim rule. This impact analysis specifically addresses significant or substantial public comments and Department modifications from the provisions as initially proposed. Unless otherwise stated, the provisions stated in the impact analysis for the Proposed Rule [11] should be regarded as the basis for the impact analysis of the interim rule. The provisions of the rule and the related changes are summarized below.

1. Food Package I—Infants Under Six Months

Proposed rule: Tie maximum infant formula prescriptions to breastfeeding practice

• Establish fully breastfed, partially breastfed, and fully formula-fed categories, and set maximum formula allowances for each. Food Package I currently specifies a single maximum formula amount for all Package I recipients; local WIC staff may tailor the amount of formula to reflect individual participant needs, based on frequency of breastfeeding. The new rule sets a maximum formula amount for partially breastfed infants age one month and older that is roughly half the maximum provided to fully formula fed infants.

[7] U.S. Department of Agriculture, Food and Nutrition Web site, July 2005. www.fns.usda.gov/wic/FAQs/FAQ.HTM.

[8] See U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans,* 2005, 6th edition, Washington DC: U.S. Government Printing Office, January 2005. (USDHHS/USDA, 2005)

[9] IOM, p.59. Note, however, that these conclusions are based on self-reported food consumption data from the Continuing Survey of Food Intakes by Individuals (1994–1996 and 1998.) Underreporting of food intakes is suspected by women involved in the survey. And, the data do not include nutrients consumed in the form of dietary supplements. These factors may overstate the problem of nutrient inadequacies, and may understate the problem of excessive intakes.

[10] See IOM, p. 63; see also ''High Costs of Poor Eating Patterns in the United States,'' Elizabeth Frazão, in *America's Eating Habits: Changes and Consequences,* Elizabeth Frazão, ed., Economic Research Service, U.S. Department of Agriculture, Washington, DC, 1999.

[11] 71 FR 44784: Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages: Proposed Rule, August 7, 2006, p. 44825.

• Powder formula alone is recommended for partially breastfed infants. Powder and non-powder options remain available for fully formula fed infants.

Interim rule: No change from Proposed Rule.

Proposed rule: Delay introduction of complementary foods. Extend the age range of infants covered by Food Package I by two months. Currently, Food Package I supplements the diets of infants from birth through three months. Under the proposed rule, Food Package I would be provided to infants through five months of age. Under both the current and proposed rules, Food Package I contains no complementary foods. Extending the age range of infants served by Food Package I removes complementary foods (juice and infant cereal) from the food packages for four and five-month-old infants, which is consistent with current infant feeding practice guidelines.

Interim rule: No change from Proposed Rule.

Proposed rule: Increase maximum formula prescription at four months. Increase the maximum amount of formula allowed for four and five-month-old infants (relative to the amount allowed under current rules.)

Interim rule: No change from Proposed Rule.

Proposed rule: No partially breastfed category for infants under one month. Do not provide formula to breastfed infants under one month old. Infants under one month will be recognized as either fully breastfed or fully formula-fed. No infant will be prescribed formula in the amount specified by Food Package I for partially breastfed infants until he or she reaches one month.

Interim rule: Provide formula to partially breastfed infants under one month. Partially breastfed infants ages 0 through 1 month may receive the equivalent of not more than 104 fluid ounces of reconstituted infant formula, approximately one can of powder infant formula.

Rationale: The interim rule intends to encourage mothers to continue a practice of breastfeeding that may have begun at the hospital. However, FNS recognizes the need for States to have the flexibility to provide a small amount of formula in the first month of life, if necessary, to assist breastfeeding mothers who may otherwise choose to formula feed. Powder infant formula is recommended due to its longer shelf life and to minimize waste. Individual amounts may be tailored by a Competent Professional Authority based on the assessed needs of the breastfeeding infant.

Proposed rule: No low iron formula. Discontinue the prescription of low iron infant formula for infants of all ages.

Interim rule: No change from Proposed Rule.

Proposed rule: Reclassify prescriptions of exempt infant formula under Package III. Administer exempt formulas, other than those prescribed for common food allergies, under Food Package III. Currently, all infants are classified as recipients of Food Packages I or II. This proposal would simply reclassify certain Package I (and II) recipients as Package III recipients; it is not intended to alter the types of foods prescribed to infants with qualifying conditions.

Interim rule: No change from Proposed Rule.

2. Food Package II—Infants 6 Through 11 Months

Proposed rule: Delay introduction of complementary foods. Delay the age at which infants become eligible for Food Package II. Infants are currently made eligible for Food Package II and its complementary foods at four months of age. The proposed rule would make infants age one month or older eligible for Package II foods at six months of age.

Interim rule: No change from Proposed Rule.

Proposed rule: Tie maximum formula prescription to breastfeeding practice. Establish fully breastfed, partially breastfed, and fully formula-fed categories, and set maximum formula allowances for each. The new rule sets a maximum formula amount for partially breastfed infants that is roughly half the maximum provided to fully formula-fed infants.

Interim rule: No change from Proposed Rule.

Proposed rule: Reduce maximum formula prescription amounts. Reduce the amount of formula, relative to current rules, for partially breastfed and fully formula-fed infants.

Interim rule: No change from Proposed Rule.

Proposed rule: Replace infant's juice with fruits and vegetables

• Eliminate juice from Food Package II. Add infant food fruits and vegetables to the package. Allow fresh bananas as a substitute for a portion of the infant food fruits and vegetables.

• Provide more infant food fruits and vegetables to fully breastfed infants than to partially breastfed or fully formula-fed infants.

Interim rule: No change from Proposed Rule.

Proposed rule: Provide infant food meat to fully breastfed infants. Add infant food meat to Package II for fully breastfed infants.

Interim rule: No change from Proposed Rule.

Proposed rule: No low iron formula. Discontinue the prescription of low iron infant formula.

Interim rule: No change from Proposed Rule.

Proposed rule: Reclassify prescriptions of exempt infant formula under Package III. Administer exempt formulas to infants under Food Package III.

Interim rule: No change from Proposed Rule.

Proposed rule: Disallow prescription of infant cereal with added ingredients. Infant cereal with added fruit, milk, formula, or other non-grain foods may not be prescribed under Food Package II.

Interim rule: No change from Proposed Rule.

3. Food Package III—Medically Fragile Participants

Proposed rule: Administer exempt formulas to infants with qualifying conditions under Package III

Infants with a qualifying condition (see below) who currently receive exempt infant formulas would be moved from Package I or Package II to Package III.

Interim rule: In addition to the provisions of the Proposed Rule, the interim rule will allow medically fragile infants 6 months of age or greater whose medical condition prevents them from consuming complementary infant foods (cereal, fruit and vegetables, and meat) to receive exempt infant formula or WIC-eligible medical foods at the same maximum monthly allowance as infants ages 4 through 5 months of the same feeding option.

Rationale: Comments expressed concern about medically fragile infants 6 months of age or greater whose medical condition prevents them from consuming complementary infant foods. The allowance of exempt infant formula or WIC-eligible medical foods will replace nutrition that would result from the addition of complementary foods.

Proposal Rule: Clarify language governing Package III's purpose and scope

• The proposed rule would provide additional guidance to States on the nature of medical conditions that qualify a WIC participant for Package III medical foods.

• Prescription of a medical food would also require additional justification and instructions by a licensed health care professional.

Interim rule: No change from Proposed Rule.

Proposed rule: Make non-Package III foods available to Package III recipients. In addition to the medical foods and exempt formulas currently prescribed to Package III recipients, the proposed rule would offer these individuals all of the foods in the packages to which they would have been eligible in the absence of their special medical needs.

Interim rule: No change from Proposed Rule, with the exception of whole milk. Whole milk will be authorized for children 1 through 4 years of age and women receiving Food Package III, with medical documentation.

4. Food Package IV—Children From Age One up to Age Five

Proposed rule: Reduce the prescribed amount of milk; modify substitution options

• The maximum amount of milk that may be prescribed to children would be reduced from 24 quarts to 16 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace up to three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.

• Soy products will be allowed as a milk substitute on a restricted basis; soy may only be prescribed to children with a documented medical need.

Interim rule: In addition to the provisions of the Proposed Rule, the interim rule clarifies the authorization of lactose-reduced and lactose-free milk, and that these products should be offered before other authorized milk substitutes to those participants who cannot drink milk due to lactose intolerance. The interim rule also clarifies that medical documentation is not required for participants to receive lactose-reduced and lactose-free milk.

Rationale: The IOM emphasized the importance of milk in the diets of WIC participants, and approached the issue of milk substitutes with caution. The IOM considered and rejected the substitution of soy products for milk in the revised childrens' food package without documented medical need.

Proposed rule: Provide only fat-reduced milk to older children. Prescribe only fat-reduced milk to children age two and above. Prescribe only whole milk to children under age two.

Interim rule: No change from Proposed Rule.

Proposed rule: Modify/clarify reconstitution rates for dry and evaporated milk. The reconstitution rate for evaporated milk is changed from 13 to 16 ounces of evaporated milk per reconstituted quart. The reconstitution rate for powdered milk is restated in terms of fluid ounces rather than quarts; this change does not alter the reconstitution rate itself.

Interim rule: No change from Proposed Rule.

Proposed rule: Reduce juice prescriptions; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 288 fluid ounces to 128. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add a $6 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables other than white potatoes.

Interim rule: No change from Proposed Rule.

Proposed rule: Add whole grain breads; add whole grain requirement to cereal.

• Add two pounds of whole grain bread to the food package. Only bread meeting U.S. Food and Drug Administration (FDA) standards for whole grain labeling would be allowed.[12]

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of State agencies. States may limit or completely eliminate substitutes if needed to control food costs.

• Require that WIC authorized breakfast cereals [13] meet the same whole grain requirements as bread.

Interim rule: Revise proposed whole grain requirements.

• The cereal whole grain requirement in the Proposed Rule will be modified to require that at least one half of the total number of breakfast cereals on a State's authorized food list meet the whole grain requirement as defined in the interim rule, and that vendors be required to stock at least one whole grain cereal. The remaining authorized breakfast cereals are required to meet only the iron and sugar requirements.

• To assist in the identification of whole grain bread, cereal, and whole grain foods, the interim rule adds the requirement that a whole grain must be the primary ingredient by weight in all bread, cereal and whole grain products.

Rationale:

• Comments expressed concern that the proposed nutritional requirement for whole grain breakfast cereal (using FDA's Health Claim [14]) is too restrictive and would eliminate corn and rice-based cereals that are necessary for those participants with wheat allergies or strong preferences for corn and rice-based cereals. In addition, commenters stated that whole grain cereals are less palatable to young children.

• Comments expressed concern about administrative difficulties in the identification of whole wheat bread and whole grain foods. To ensure State agencies determine the correct foods to authorize for State food lists, the Department has determined that whole-grain foods must have a whole-grain as the primary ingredient. This will allow products that are 100 percent whole grain, or are primarily whole wheat or multi-grain, to be WIC-eligible as well as provide an easy way for participants and vendors to identify most whole grain bread products by using the food ingredient label.[15]

Proposed rule: Reduce maximum egg prescription.

Reduce the maximum egg prescription from two and one-half dozen per month [16] to one dozen.

Interim rule: No change from Proposed Rule.

Proposed rule: Allow canned beans as a substitute for dry beans.

Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound.

Interim rule: No change from Proposed Rule.

5. Food Package V—Pregnant and Partially Breastfeeding Women Up to One Year Postpartum

Proposed rule: Condition eligibility for Package V on breastfeeding practice.

Mothers who request, and are prescribed, more than the maximum amount of formula allowed for partially breastfed infants will no longer be eligible for Food Package V. Currently, women who breastfeed at least once per day are eligible for this package. Reclassified as non-breastfeeding for purposes of WIC food package issuance, these women will be assigned Food Package VI up to six months postpartum; they will receive no food package after six months.

Interim rule: No change from Proposed Rule.

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package V recipients would be reduced from 28 quarts to 22 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.

• Calcium-set tofu [17], and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than four quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the four quart maximum. No more than one pound of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package V's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute in Section F, Item 1.)

Interim rule: In addition to the provisions of the Proposed Rule, the interim rule clarifies the authorization of lactose-reduced and lactose-free milk, and that these products should be offered before other authorized milk substitutes to those participants who can not drink milk due to lactose intolerance. The interim rule also clarifies that medical documentation is not required for participants to receive lactose-reduced and lactose-free milk.

Rationale: Lactose-reduced and lactose-free milks conform to the FDA standard of identity. The authorization of these milks was not specified in the Proposed Rule.

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 288 fluid ounces to 144. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables other than white potatoes.

Interim rule: No change from Proposed Rule.

Proposed rule: Add whole grain breads; add whole grain requirement to cereal.

• Add one pound of whole grain bread to the food package. Only bread meeting U.S. Food and Drug Administration (FDA) standards for whole grain labeling would be allowed.[18]

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or

[12] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html.*

[13] The proposed rule would also replace the existing terms ''cereal (hot or cold)'' and ''adult cereal (hot or cold)'' with ''breakfast cereal'' in 7 CFR 246.10(c).

[14] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html.*

[15] Baked in-store breads generally have no label.

[16] Some states currently allow just two dozen as the monthly maximum.

[17] Tofu prepared with only calcium salts.

[18] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html.*

sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of State agencies. States may limit or completely eliminate substitutes if needed to control food costs.

• Require that WIC authorized breakfast cereals meet the same whole grain requirements as bread.

Interim rule: Revise proposed whole grain requirements.

• The cereal whole grain requirement in the Proposed Rule will be modified to require that at least one half of the total number of breakfast cereals on a State's authorized food list meet the whole grain requirement as defined in the interim rule, and that vendors be required to stock at least one whole grain cereal. The remaining authorized breakfast cereals are required to meet only the iron and sugar requirements.

• To assist in the identification of whole grain bread and whole grain foods, the interim rule adds the requirement that a whole grain must be the primary ingredient by weight in all bread products.

Rationale:

• Comments expressed concern that the proposed nutritional requirement for whole grain breakfast cereal (using FDA's Health Claim [19]) is too restrictive and would eliminate corn and rice-based cereals that are necessary for those participants with wheat allergies or strong preferences for corn and rice-based cereals.

• Comments expressed concern about administrative difficulties in the identification of whole wheat bread and whole grain foods. To ensure State agencies determine the correct foods to authorize for State food lists, the Department has determined that whole-grain foods must have a whole-grain as the primary ingredient. This will allow products that are 100 percent whole grain, or are primarily whole wheat or multi-grain, to be WIC-eligible as well as provide an easy way for participants and vendors to identify whole grain bread products by using the food label.

Proposed rule: Reduce maximum egg prescription.

Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Interim rule: No change from Proposed Rule.

Proposed rule: Allow canned beans as a substitute for dry beans.

Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound.

Interim rule: No change from Proposed Rule.

Proposed rule: Increase total amount of peanut butter and beans.

Peanut butter is currently offered as a substitute for dry beans. The proposal would provide both one pound of dry beans and 18 ounces of peanut butter to Package V recipients. The rule also clarifies that Package V recipients may replace both dry beans and peanut butter with canned beans.

Interim rule: No change from Proposed Rule.

6. Food Package VI—Postpartum Women (Up to Six Months Postpartum)

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package VI recipients would be reduced from 24 quarts to 16 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged. Calcium-set tofu, and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than four quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the four quart maximum. No more than one pound of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package VI's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute in Section F, Item 1.)

Interim rule: In addition to the provisions of the Proposed Rule, the interim rule clarifies the authorization of lactose-reduced and lactose-free milk, and that these products should be offered before other authorized milk substitutes to those participants who can not drink milk due to lactose intolerance. The interim rule also clarifies that medical documentation is not required for participants to receive lactose-reduced and lactose-free milk.

Rationale: Lactose-reduced and lactose-free milks conform to the FDA standard of identity. The authorization of these milks was not specified in the Proposed Rule.

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 192 fluid ounces to 96. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables other than white potatoes.

Interim rule: No change from Proposed Rule.

Proposed rule: Add whole grain requirement to cereal.

• Require that WIC authorized breakfast cereals meet the same whole grain requirements as bread.

Interim rule: Add whole grain requirement to cereal.

The cereal whole grain requirement in the Proposed Rule will be modified to require that at least one half of the total number of breakfast cereals on the State's authorized food list meet the whole grain requirement as defined in the interim rule, and that vendors be required to stock at least one whole grain cereal. The remaining authorized breakfast cereals are required to meet only the iron and sugar requirements. To assist in the identification of whole grain cereal, the interim rule adds the requirement that a whole grain must be the primary ingredient by weight.

Rationale:

Comments expressed concern that the proposed nutritional requirement for whole grain breakfast cereal (using FDA's Health Claim [20]) is too restrictive and would eliminate corn and rice-based cereals that are necessary for those participants with wheat allergies or strong preferences for corn and rice-based cereals. Comments also expressed concern about administrative difficulties in the identification of whole wheat bread and whole grain foods. To ensure State agencies determine the correct foods to authorize for State food lists, the Department has determined that whole-grain foods must have a whole-grain as the primary ingredient.

Proposed rule: Reduce maximum egg prescription.

Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Interim rule: No change from Proposed Rule.

Proposed rule: Add beans and peanut butter to the food package.

One pound of dry beans or 18 ounces of peanut butter would be added to Package VI. The same canned bean substitution option added to Packages IV, V, and VII would be extended to Package VI recipients as well.

Interim rule: No change from Proposed Rule.

7. Food Package VII—Exclusively Breastfeeding Women

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package VII recipients would be reduced from 28 quarts to 24 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just six quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.

• Calcium-set tofu, and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than six quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the six quart maximum. No more than two pounds of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package VII's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost

[19] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html.*

[20] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html.*

neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute in Section F, Item 1.)

Interim rule: In addition to the provisions of the Proposed Rule, the interim rule clarifies the authorization of lactose-reduced and lactose-free milk, and that these products should be offered before other authorized milk substitutes to those participants who can not drink milk due to lactose intolerance. The interim rule also clarifies that medical documentation is not required for participants to receive lactose-reduced and lactose-free milk.

Rationale: Lactose-reduced and lactose-free milks conform to the FDA standard of identity. The authorization of these milks was not specified in the Proposed Rule.

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 336 fluid ounces to 144. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables other than white potatoes.

• Eliminate the separate prescription of carrots.

Interim rule: The provision of an $8 monthly voucher has been revised to reflect a $10 monthly voucher.

Rationale: IOM recommended cash-value food instruments for fruits and vegetables at the level of $10 per month for women. To ensure cost neutrality, cash-value food instruments for fruits and vegetable was decreased to $8 per month for women. However, FNS has considered the benefits of increasing the value of the vouchers for fully breastfeeding women and has determined that a $2 increase can be accomplished while maintaining cost neutrality. In addition, the increase further enhances the attractiveness of the fully breastfeeding package and provides an additional incentive for women to breastfed.

Proposed rule: Add whole grain breads; add whole grain requirement to cereal.

• Add one pound of whole grain bread to the food package. Only bread meeting U.S. Food and Drug Administration (FDA) standards for whole grain labeling would be allowed.[21]

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of State agencies. States may limit substitutes if needed to control food costs.

Interim rule: Revise proposed whole grain requirements.

• The cereal whole grain requirement in the Proposed Rule will be modified to require that at least one half of the total number of breakfast cereals on the State's authorized food list meet the whole grain requirement as defined in the interim rule, and that vendors be required to stock at least one whole grain cereal. The remaining authorized breakfast cereals are required to meet only the iron and sugar requirements.

• To assist in the identification of whole grain bread and whole grain foods, the interim rule adds the requirement that a whole grain must be the primary ingredient by weight in all bread products.

Rationale:

• Comments expressed concern that the proposed nutritional requirement for whole grain breakfast cereal (using FDA's Health Claim [22]) is too restrictive and would eliminate corn and rice-based cereals that are necessary for those participants with wheat allergies or strong preferences for corn and rice-based cereals.

• Comments expressed concern about administrative difficulties in the identification of whole wheat bread and whole grain foods. To ensure State agencies determine the correct foods to authorize for State food lists, the Department has determined that whole-grain foods must have a whole-grain as the primary ingredient. This will allow products that are 100% whole grain, or are primarily whole wheat or multi-grain, to be WIC-eligible as well as provide an easy way for participants and vendors to identify whole grain bread products by using the food label.

Proposed rule: Reduce maximum egg prescription.

Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Interim rule: No change from Proposed Rule.

Proposed rule: Allow canned beans as a substitute for dry beans.

Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound. Also clarifies that Package VII recipients may replace both dry beans and peanut butter with canned beans.

Interim rule: No change from Proposed Rule.

Proposed rule: Modify Package VII's canned fish provision.

• Increase the maximum canned fish prescription to 30 ounces. Clarify that fish packaged in foil pouches meets WIC requirements.

• Allow three varieties of canned fish (light tuna, salmon and sardines) that are cost-effective and do not pose a mercury hazard as identified by federal advisories of the Food and Drug Administration and the U.S. Environmental Protection Agency for breastfeeding women.

Interim rule: The interim rule allows canned mackerel in addition to canned salmon and sardines, and light tuna.

Rationale: In response to comment requests, the interim rule also allows canned mackerel. The rule specifies two species of mackerel, both of which are also cost-effective and identified by the EPA and FDA as having ''lower levels of mercury.''

8. Other Provisions (Non Food-Package Specific)

Proposed rule: Clarifies the right of States to impose restrictions on WIC foods.

States retain the right to exclude particular products, by brand or variety, from the food packages distributed to their residents. States are authorized to set standards for WIC foods that are more restrictive than those set by the federal government; however, they may not authorize the prescription of foods that do not meet minimum WIC-eligibility requirements set forth in regulations. The States may take into account issues of cost, nutrition, statewide availability, and participant appeal in setting these restrictions.

Interim rule: No change from Proposed Rule.

Proposed rule: Ends the state practice of categorical nutritional tailoring.

States will no longer be permitted to construct their own standardized set of food packages for WIC subpopulations with common supplemental nutritional needs. The full maximum monthly allowances of all foods in all packages must be made available to participants if medically or nutritionally warranted. However, State agencies have the authority to make adjustments to WIC foods for administrative convenience and to control costs. Such adjustments may involve packaging methods, container sizes, brands, types and physical forms of WIC foods.

Interim rule: No change from Proposed Rule.

Proposed rule: Prohibit States from proposing new food package substitutions.

The increased variety and choice in the supplemental foods in the Proposed Rule is based on IOM recommendations and the consideration of cultural appropriate packages for diverse groups. Therefore, WIC State agency proposal for cultural food substitutions will no longer be considered. Future reviews of the WIC food packages by FNS will be used to determine the need for additional cultural accommodations.

Interim rule: State agencies may submit to FNS a plan for substitution of foods to allow for different cultural eating patterns. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern and other information necessary for FNS to evaluate the plan. FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria: (1) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace; (2) The proposed substitute must be widely available to participants in the areas where the substitute is intended to be used; and (3) The cost of the substitute must be equivalent to or less than the cost of the food it is intended to replace. These criteria are the same as those under current WIC regulations at 7 CFR 246.10(e).

Rationale: Comments requested that the interim rule allow States the flexibility to meet unanticipated cultural needs of participants.

[21] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content at http://www.cfsan.fda.gov/~dms/flgrain2.html.*

[22] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content at http://www.cfsan.fda.gov/~dms/flgrain2.html.*

Proposed rule: Rounding up for infant food and infant cereal

A state agency may round up to the next whole container for either infant formula or infant foods (infant cereal, fruits and meats) if needed to provide at least the maximum authorized amount of these foods. For infant formula, state agencies must issue the whole containers that provide at the least the full nutritional benefit (the maximum allowance of reconstituted fluid ounces of liquid concentrate) but not more than the maximum allowance of infant formula for each food package category and infant feeding option.

Interim rule: No change from Proposed Rule.

C. Summary of Key Provisions

The expected impact of the interim rules on the federal government, state and local WIC agencies, vendors, manufacturers, and program participants is summarized in Table 1. Overall economic effects are noted with a ''+$'' for cost increases, and a ''−$'' for cost savings. A more detailed examination of strictly economic effects follows Table 1.

TABLE 1.—SUMMARY OF KEY PROVISIONS

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Current rule:				
1. Food Package I serves infants from birth through three months. Formula is the only food prescribed under Package I.	Reduces cost of infant food packages. Interim packages for four and five month old infants (which reduce calories slightly) are less expensive than current Food Package II.	Changes to current rules will require the implementation of new state and local administrative procedures.	May increase the sale of infant formula at the expense of juice and infant cereal.	Provides a food package that conforms more closely to the diet recommended by health professionals for four and five month old infants.
2. Infants from four through eleven months are eligible for juice and infant cereal, in addition to formula, under Package II. The maximum formula prescription in packages I and II are the same.				
Interim rule:				
1. Expand Food Package I to serve infants up to six months. Delay the introduction of complementary foods by two months.				
2. Increase formula prescriptions at four months to offset lost food energy.				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
−$ Current rule: Under Food Package I, an infant can receive up to the maximum infant formula for the package. Since the rule does not separate partially and fully formula fed infants, a single package maximum applies to all partially and fully formula-fed infants from birth through three months. Food Package V is provided to pregnant women and to all new mothers, up to one year postpartum, if they breastfeed at least once per day. Food Package VII is provided to fully breastfeeding mothers. Interim rule: Infants and mothers will be assigned food packages based on the mother's reported breastfeeding practice. The corresponding amount of formula prescribed will distinguish infants less than 4 months of age as partially breastfed or fully formula-fed. The rule would provide a full formula-feeding package to some infants currently considered partially breastfed; it would move some mothers from Package V to Package VI. Partially breastfed infants under one month of age would be allowed to receive limited infant formula; this would move some mothers from Package VI or VII to Package V. −$	If breastfeeding increases enough to keep an infant classified as partially breastfed who would have been classified as fully formula fed otherwise, then formula costs are reduced and there is no change in the mother's status. For partially breastfed infants under one month of age, the low formula limit provided during that first month, paired with the net effect of mothers and infants switching from fully-formula feeding or fully breastfeeding to partially breastfeeding during the first month may reduce costs during the infant's first month. However, a sustained increase in breastfeeding during an infant's first year will affect the food package eligibility of both the mother and the infant. Although the economic effect of such a sustained increase is dependent on both breastfeeding duration and on the relative rates of partial and exclusive breastfeeding, the net economic effect is likely to be a reduction in cost.	State and local agencies must develop new guidelines to implement and communicate this policy.	Negligible effect on the sale of infant formula for newborn infants. But, the rule provides an incentive to breastfeed, which may ultimately reduce formula sales beyond the infants' first month. Moving mothers from the fully formula fed package to the partially or exclusively breastfeeding packages, may slightly increase food sales to breastfeeding mothers.	Although some participants may receive less food or formula under the interim packages, in general, WIC infants and mothers will benefit from the enhanced packages and package assignment method. Breastfeeding education and limited formula provided to new mothers by WIC staff may successfully increase breastfeeding rates. This is consistent with the recommendations of nutrition experts. However, it is uncertain whether this will have a significant impact on the number of WIC women who breastfeed.
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
The current infant food packages do not distinguish between fully and partially formula-fed infants. Infants receive infant formula based on an assessment of their supplemental nutritional needs, subject to a single package maximum. Food Package V is provided to pregnant women and to all new mothers, up to one year postpartum, if they breastfeed at least once per day and their infant receives some formula.	If the interim rule has no direct effect on the initiation and duration of breastfeeding, the cost of providing food packages to women will drop; the cost of providing infant formula will remain unchanged. If breastfeeding increases enough to keep an infant classified as partially breastfed who would have been classified as fully formula fed otherwise, then formula costs are reduced and there is no change in the mother's status. Both result in cost reductions.	State and local agencies must conform to a new definition of breastfeeding for WIC food package purposes. Will also encourage changes in the approach to nutrition education; places greater emphasis on breastfeeding promotion. Implementing new procedures will initially increase administrative burden.	Negligible effect in the absence of changes in breastfeeding behavior. Increased breastfeeding would reduce formula sales but might modestly increase the sale of infant food fruits, vegetables and meat to WIC's fully breastfed population.	Although the WIC food benefit received by women who do not fully breastfeed may be reduced, in general, WIC infants and mothers will benefit from the enhanced packages and package assignment method. The interim packages encourage breastfeeding consistent with the best advice of nutrition science. However, breastfeeding is a behavior with many complex determinants, and it is unlikely that the food package changes alone will alter breastfeeding practices.
Interim rule: Infants and mothers will be assigned food packages based on the mother's reported breastfeeding practice. The corresponding amount of formula prescribed will distinguish infants between partially breastfed and fully formula-fed. The rule would provide a full formula-feeding package to some infants currently considered partially breastfed; it would move some mothers from Package V to Package VI, or after six months of participation, to no package at all, depending on the amount of formula requested. −$				
Current rule: Currently, the definition of breastfeeding in WIC regulations allows women who breastfeed once a day to be eligible for the WIC program and receive supplemental foods.	These women are already counted as participants when they receive food benefits as breastfeeding women, so the net effect of the change in the definition of participation is minimal. These women will continue to be included in participation numbers and State agencies will be provided NSA funds.	State agencies will be provided NSA funds for a very small number of women who are receiving WIC benefits (nutrition education/ breastfeeding support and referrals to health and social services), but not receiving supplemental foods.	Negligible effect because it applies only to the few women who breastfeed for longer than six months but request the full formula fed amount of infant formula for their infant. These mothers once received supplemental foods but will no longer be eligible for these foods. They will still be visiting WIC approved vendors to obtain infant formula.	Encourages more intensive breastfeeding for WIC women after six months of participation.
Interim rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Revise the definition for WIC participation to include the number of breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives supplemental foods or food instruments. −$				
Current rule: Infants from 4–11 months are eligible for Food Package II. That food package includes juice and infant cereal, as well as formula.	The net effect of these changes increases the cost of Food Package II.	Implementing new procedures, such as setting state policy on allowed varieties of infant food, will increase short-term administrative burden. MIS systems will need to be revised for new foods (infant fruits and vegetables), quantities, and the new age range. Need to train WIC staff, vendors and participants on new foods.	May increase sales of infant food and decrease sales of juice and formula if participants were not already using the quantities in the interim rule. Some vendors may need to stock additional infant food varieties that meet the specific specifications set by the states. Vendors will need to train personnel to identify the newly WIC-eligible infant foods.	Restructures the infant package according to the recommendations of current nutrition science. Increases benefits by adding fruits and vegetables, but decreases maximum allowance of infant formula and eliminates juice. Encourages good infant feeding practices and the consumption of fruits and vegetables.
Interim rule: The following changes are made to Food Package II: 1. Change age eligibility to 6–11 months. 2. Eliminate juice. 3. Add infant food fruits and vegetables. 4. Reduce maximum formula amount. +$				
Current rule: All infants are eligible for the same amounts of formula, juice, and infant cereal under Food Package II.	The cost of the fully breastfed package for infants age six months and older is increased significantly.	Implementing new procedures, such as setting state rules on permissible varieties of infant food meat, will increase short-term administrative burden. Need to train WIC staff, vendors and participants on new foods. MIS systems will need to be revised.	Increase in sales of infant food meat is likely to be negligible. The number of fully breastfed WIC infants age six months and over is small. Vendors will need to train personnel to identify the newly WIC-eligible infant foods and distinguish them from similarly packaged ineligible items.	Provides added iron and zinc to the diet of fully breastfed infants age six months and older. Also encourages breastfeeding by increasing benefits. Both are consistent with the recommendations of current nutrition science.
Interim rule: Provide relatively more infant food fruit and vegetables to fully breastfed infants at six months than to partially breastfed or fully formula-fed infants. Also provide infant food meat to this group. +$				
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
1. Low iron infant formula may be prescribed with medical documentation. 2. Infant cereal must be iron-fortified; WIC regulations contain no other specifications.	These changes are expected to have little effect on the foods actually prescribed to WIC infants. The infant cereal rule simply formalizes what has been federal policy since 1980.	The states will incur minimal short-term administrative burden as they implement these minor rule changes. Local WIC agencies will need to communicate the "no low iron infant formula from WIC" concept to the local medical community and some participants. MIS systems will need to be revised.	Sales of low iron formula and certain infant cereal varieties will be reduced slightly, if at all, by these rules.	The very few WIC participants who have been receiving low iron formula from WIC will either need to purchase the product or work with their medical provider to change to an iron fortified infant formula authorized by WIC.
Interim rule: 1. Disallow the prescription of low iron infant formula. 2. Disallow the prescription of infant cereal with added ingredients.				
(minimal economic effect)				
Current rule: Children and women with special dietary needs are prescribed WIC-eligible medical foods under Food Package III. Infants with special dietary needs are provided exempt infant formula under Food Packages I or II.	The rule is intended to reduce administrative costs and facilitate program management.	The rule is intended to facilitate program management. It may also allow improved service to WIC beneficiaries. MIS systems will need to be revised.	No impact.	No direct impact. Improved service at the state and local level may result, to the benefit of WIC participants.
Interim rule: Serve infants with special dietary needs who receive exempt infant formulas under Food Package III.				
−$				
Current rule: Current practice allows some women and children with certain dietary restrictions, but without serious medical conditions, to be prescribed medical foods under Food Package III.	Clarifies who is eligible for Food Package III and what foods may be distributed as part of that package. These clarifications are generally aimed at tightening these criteria. Will, if anything, reduce Package III costs by moving some participants to food packages more appropriate for their needs. But, given the size of the current Package III population (roughly 1% of all WIC participants) these savings will be small.	The rule may reduce administrative burden by eliminating Package III eligibility issues. But, it may require state efforts to educate local WIC officials, WIC participants, and health care professionals on the eligibility criteria.	Possible minimal reduction in the sale of medical foods due to eligibility requirements.	Some current participants receiving Package III may be served under food packages more appropriate to their needs.
Interim rule: Clarify language governing the purpose and scope of Package III eligibility.				
−$				
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Package III recipients are prescribed medical foods only; they do not receive any of the standard food package foods.	This rule will increase costs in those cases where Food Package III recipients are able to consume the foods contained in the regular WIC food packages to which they would otherwise be eligible. But, the Package III population is small. The costs will be modest.	Administrative burden of implementing the new rule will be incurred in the short run. Local agencies will need to determine which WIC foods can be purchased to each Food Package III recipient. MIS systems will need to be revised.	May have a small positive effect on the sale of some secondary WIC foods. Will not affect sales of infant formula.	For those Package III recipients able to consume at least some non-Package III WIC foods, this rule will provide them with additional food.
Interim rule: Make other WIC foods available to Package III recipients. +$				
Current rule: Food Packages IV through VII provide WIC beneficiaries with 24 to 28 quarts of milk per month. Cheese may be substituted for milk at a rate of one pound per three quarts; cheese may replace a total of 12 quarts of milk.	The net effect of this provision will be a reduction in overall cost, due to the reduction in quantities allowed and reduced substitution amounts.	The states will need to establish new specifications and restrictions for the new milk substitutes. They will also incur administrative burden in implementing changes to reflect reduced milk prescription maximums and substitution limits. Local agencies will need to educate WIC vendors and participants on new food items. MIS systems will need to be revised.	The rule may result in reduced milk and cheese sales to WIC participants. It may lead to increased sales of tofu and soy beverage. Vendors may need to stock new items that match the specific product requirements set by the states. Rule proposes nutritional standards for soy milk that are currently not met by many products on the market. Because these standards will also apply to the school meals programs, vendors are likely to change fortification so that the variety of available soy beverages that can be authorized improves over time.	Reduces dairy component of WIC benefit. WIC participants who are unable to drink milk may benefit most by the addition of these new substitutes. Others with individual or cultural preferences will also benefit by the added choices. All WIC participants will benefit from a package lower in saturated and total fat, consistent with the recommendations of current nutrition science.
Interim rule: Reduce maximum milk prescription amounts to WIC children and women. Add new milk substitution options (tofu, cheese and soy beverage), but reduce the maximum amount of cheese substitution allowed. −$				
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Juice may be prescribed under Food Packages IV through VII at maximum levels that range from 192 to 336 fl. oz. per month.	The fixed dollar values of the fruit and vegetable vouchers in the interim rule are greater than the offsetting savings that will be realized through reduced juice amounts.	States will need to authorize and develop a structure to distribute and redeem fruit and vegetable vouchers, which will be a new component of the programs. This administrative burden will be on-going but part of the current banking and MIS systems. State and local agencies will incur administrative burden in developing educational messages for WIC participants concerning the selection of nutritious fruits and vegetables. Need to train WIC staff, vendors and participants on new food amounts. MIS systems will need to be revised.	Juice sales to WIC participants may decline. Sales of fruits and vegetables may increase. Costs will be incurred by vendors as they learn to accommodate the new WIC vouchers. Some WIC authorized vendors may need to add fruits and vegetables to their stocks in fresh, frozen, or canned form. Emphasis on fresh fruits and vegetables may encourage states to authorize and participants to shop at farmers markets more often. (See Market Analysis discussion in Section G).	Expands WIC benefits by adding fruits and vegetables, while reducing juice amounts. The addition of fruits and vegetables to the WIC food packages responds to the recommendations of nutrition science. And the flexibility of a voucher will provide access to a variety of fruits and vegetables, in some form, year round, in all markets.
Interim rule:				
Reduce maximum juice prescription amounts in food packages for children and women. Add a voucher for fruits and vegetables (other than white potatoes) to those packages.				
+$				
Current rule:				
Eggs are provided under Food Packages IV through VII. States may set their monthly maximums at either 2 or 2½ dozen per month.	Reducing the maximum egg prescription will produce a modest reduction in food package costs. That reduction is used to help offset costs of new foods and substitution options.	State and local administrative burden will be incurred in the short term as new procedures are put in place. Local agencies will need to educate WIC vendors and participants on new food amounts. MIS systems will need to be revised.	Sales of eggs to WIC participants will decline. Market effects will be minimal.	This change reduces food energy, cholesterol, and fat content of the WIC food packages. The changes are consistent with the advice of current nutrition science. The reduction in food energy also makes room for the introduction of new foods that address priority nutrient needs.
Interim rule:				
1. Reduce maximum egg prescription in all food packages for women and children.				
−$				
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
There are no restrictions on the fat content allowed in milk.	Prescribing only fat reduced milk to women and children age two and older will have a negligible effect on cost.	State and local administrative burden will be incurred in the short term as new procedures are put in place. Local agencies will need to educate WIC vendors and participants on new food amounts. MIS systems will need to be revised.	Market effects will be minimal. Vendors will need to train personnel to allow the type of milk specified on the food instruments.	This proposal reduces total fat and saturated fat content of the WIC food packages. The change is consistent with the advice of current nutrition science.
Interim rule: 1. Provide only fat reduced milk to women as well as children age two and older. 2. Provide only whole milk to children one year of age.				
−$				
Current rule: Grains are included in the current food packages for women and children in the form of breakfast cereal. Current regulations do not specify a minimum whole grain content for that product.	The addition of whole grain bread to Packages IV, V, and VII increases the cost of those packages. The requirement for 50 percent of available cereals for children and women to be classified as whole grain will have a minor effect on cost.	State and local agencies will incur administrative burden to implement the new rules. States will incur administrative burden in establishing specifications and restrictions for the new foods and substitution options and local clinics will incur additional administrative burden to explain food options to participants. Local agencies will need to educate WIC vendors and participants on new food amounts and how to distinguish them from similarly packaged ineligible items. MIS systems will need to be revised.	Manufacturers may respond by reformulating popular WIC-approved cereals in whole grain form. Smaller vendors may need to modify stocks to include whole grain bread varieties and at least one whole grain cereal. All vendors will need to train personnel to readily identify WIC-eligible breads and grains.	WIC participants will benefit from food packaged enhanced with whole grain cereals and food products. The addition of whole grains to the WIC packages is consistent with 2005 Dietary Guidelines for Americans that encourage increased consumption of these foods.
Interim rule: 1. Add whole grain bread to Food Packages IV, V, and VII. Allow substitutions of other whole grain foods for bread. 2. Require that at least 50 percent of breakfast cereals on State agency food lists must have whole grain as the primary ingredient and meet FDA labeling requirements for making a health claim as whole grain food of moderate fat content.[23] State agencies must require vendors to stock at least one whole grain cereal.				
+$				
Current rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Dry beans are included in Food Packages IV, V, and VII. Canned beans may be prescribed, instead of dry, to WIC participants who lack cooking facilities.	The rate of substitution between canned and dry beans in the interim rule will increase costs. However, the cost of beans in the food packages is relatively small and this change will have a relatively modest effect on overall program cost.	The option in the interim rule will prompt states to set specifications and restrictions. Other short-term administrative burden will be incurred as the new rule is put in place. Local agencies will need to educate WIC vendors and participants on new food amounts. MIS systems will need to be revised.	Market effects will be minimal. But, as with the addition of any WIC substitution option, small vendors may need to add new items to their stocks, and all vendors will need to train personnel to identify the newly-eligible WIC foods.	By adding variety and convenience, the canned bean option should increase the appeal of that food. It may also encourage greater consumption, replacing less healthy foods in the diets of WIC participants.
Interim rule: 1. Allow canned beans as a substitute for dry in all food packages for children and women. 2. Allow both Package V and Package VII recipients to replace both their dry bean and peanut butter allocations with canned beans.				
+$				
Current rule: Beans and peanut butter are not included in Food Package VI. Package V currently provides a pound of dry beans; those can be replaced with 18oz of peanut butter.	The costs of food packages V and VI are increased.	Neither of these changes introduces foods not already included in other WIC packages. Local agencies will need to educate WIC vendors and participants on new food amounts. MIS systems will need to be revised.	Minimal market impact.	The addition of beans and peanut butter increases benefits to WIC participants. These changes supplement the diets of breastfeeding and postpartum women with several of the priority nutrients identified by the IOM.
Interim rule: 1. Add one pound of beans, with an 18oz peanut butter substitution option, to Food Package VI. 2. Increase the amount of beans and peanut butter allowed under Food Package V; allow the prescription of both one pound of beans and 18oz of peanut butter.				
+$				
Current rule: 26 oz of tuna is made available to exclusively breastfeeding women in Food Package VII. White, light, or dark tuna, packed in water or oil, is allowed.	Costs will increase slightly. While the new substitution option may increase the cost of individual prescriptions, the number of WIC participants eligible for Food Package VII is very small.	States and local agencies will incur administrative burden in implementation. State agencies will adopt specifications and restrictions for the new substitution option. Local agencies will need to educate WIC vendors and participants on new food amounts. MIS systems will need to be revised.	Minimal market impact. But, may force small vendors to stock additional types of canned fish and will require all vendors to train personnel to identify newly-eligible WIC foods.	These changes add new choices that may encourage consumption. The rule also responds to medical advice that breastfeeding women avoid fish species that are high in mercury.
Interim rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Authorize a variety of canned fish that do not pose a mercury hazard to fully breastfeeding women. Slightly increase the maximum amount allowed to 30 ounces.				
+$				
Current rule:				
State WIC agencies impose restrictions on some foods by brand or variety in order to limit cost or ensure statewide product availability. The practice is accepted but not formally authorized by regulation.	This simply clarifies what is already accepted policy. The policy is an effective way to control costs. Since the rule represents no change from current practice, it results in no economic impact.	States are given formal approval for current practice. States should incur little or no administrative burden in implementation.	If States adopt restrictions on the brands or varieties of foods newly added to the WIC food packages, then participants who already purchase those foods may switch their selection of brands or varieties to the WIC-approved choices. A measurable shift in consumption by brand or variety may result.	WIC participants may need to switch brands or varieties of foods that they currently consume to brands and varieties consistent with those added to the WIC packages.
Interim rule:				
Clarifies the right of States to restrict WIC foods by variety or brand.				
(minimal economic impact)				
Current rule:				
States are permitted to prescribe foods to WIC participants in quantities that are less than the package maximums when nutritionally warranted. States may also standardize these reductions and apply the reduced amounts consistently to like groups of WIC participants. Such categorical food package tailoring may be done for nutritional reasons, but not to achieve cost reductions.	Assures more consistent WIC benefits are delivered across States.	The rule reduces the level of work currently undertaken by State officials. Administrative burden will decrease to the extent that states will not undertake their own review of WIC prescription maximums in response to the federal revisions to the WIC food packages. In the absence of this rule, States may have incurred administrative burden.	Minimal effect on vendors and producers.	Assures more consistent WIC benefits are delivered across States. IOM has based food prescription quantities on current nutritional science rendering food package tailoring unnecessary.
Interim rule:				
Ends the practice of categorical tailoring of WIC food packages by States.				
−$				
Interim rule:				

TABLE 1.—SUMMARY OF KEY PROVISIONS—Continued

Current and interim rules:	Effect of interim rule on:			
	USDA/Federal gov't	State/local agencies	Vendors/industry	WIC participants
Allow State agencies to round up to the next whole container of infant foods if needed to provide the maximum authorized amount of these foods.	Minimal cost given the small container sizes involved. Rounding up is likely to require the addition of little jarred infant food to the food packages; containers are typically just 4oz. The current infant cereal maximum of 24oz is a multiple of a commonly prescribed package size; 8oz boxes are among the standard package sizes.	States may incur some administrative burden to implement, particularly if manufacturers change container sizes in response to this rule. Local agencies will need to educate WIC vendors and participants on rounded formula amounts. MIS systems will need to be revised.	Unless manufacturers change container sizes to achieve greater product sales, no impact is expected.	Will ensure WIC participants get the full nutritional benefit authorized.
+$				
Interim rule:				
Allow State agencies to propose plans for additional package substitutions to meet unanticipated cultural needs of participants. State agencies will only substitute foods after receiving written approval from FNS.	Will increase administrative costs of considering proposals but little effect on program costs since very few package substitutions have ever been approved.	Because of the interim rule's flexibility in food offerings, States will no longer have as much, if any, need to request substitutions to meet cultural preferences. Administrative savings will accrue for those States that do not pursue substitutions.	Minimal since very few food package substitutions have ever been permitted.	Minimal since very few food package substitutions have ever been permitted.

D. Costs

1. Interim Rule

Under the interim rule, FNS estimates that the revisions to the WIC food packages will be cost-neutral. FNS estimates that the changes will decrease costs by $29.7 million over five years.

The economic effects of the interim rule on the federal government over a five-year period are summarized in Table 2, which presents the impacts of the revisions by food package type. These figures are limited to food costs; no additional funds will be provided to States or local clinics to implement this rule. The costs have been adjusted for the rule's phased-implementation schedule. Current and interim food package costs are provided in Tables A1-A3 in Appendix A.

TABLE 2.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS

[in millions]

Food package	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2008–FY 2012
I—Infants (0–5.9 months)	−$12.6	−$44.4	−$53.4	−$55.8	−$58.3	−$224.5
II—Infants (6–11.9 months)	23.9	84.2	101.2	105.8	110.4	425.4
III—Participants with qualifying conditions	3.0	10.6	12.8	13.4	14.0	53.8
IV—Children (1–4.9 years)	−18.4	−71.0	−92.0	−102.7	−113.8	−398.0
V—Pregnant and Partially Breastfeeding Women	6.5	20.8	22.6	21.2	19.7	90.9
VI—Postpartum Women	0.5	0.4	−0.9	−2.3	−3.8	−6.3
VII—Exclusively Breastfeeding Women	2.1	6.7	7.2	6.7	6.1	28.9
Total	5.0	7.3	−2.5	−13.9	−25.6	−29.7

Negative values are cost reductions. Column and row totals may not be exact due to rounding. FY08 begins with December 2007.

2. Major Cost Drivers

Table 3 shows the major cost drivers for each food package; provisions listed do not reflect total food costs and savings. Total costs are for FY08-FY12 and have not been adjusted for the rule's phased implementation.

TABLE 3.—MAJOR COST DRIVERS OF WIC FOOD PACKAGES

Food package	Major cost drivers (2008–2012)
I	• Formula is reduced for partially breastfed infants and eliminated for fully breastfed infants (−$172 million post rebate).
II	• Formula is reduced for fully formula and partially breastfed infants and is eliminated for fully breastfed infants (−$516 million post rebate). • Juice is eliminated for all infants (−$163 million). • Infant fruits and vegetables are added along with infant meats for fully breastfed infants (+$1,117 million).
III	Package III recipients are eligible for foods in the other packages. Under the interim rule, nearly 76% of Package III recipients are infants, and 24% are children; fewer than 1% are women. (+$62 million).
IV	• Juice is reduced (−$930 million). • Milk is reduced (−$895 million), • Cheese is reduced (−$559 million). • Eggs are reduced (−$215 million). • Whole grains added (+ $703 million). • $6 cash-value instrument for fruits and vegetables is added (+ $1,314 million).
V	• Juice is reduced (−$305 million). • Cheese is reduced (−$219 million). • Milk is reduced (−$219 million). • Beans are increased (+$113 million). • Milk substitutions are added (soy beverage and tofu) (+$180 million). • $8 cash-value instrument for fruits and vegetables is added (+$486 million).
VI	• Milk is reduced (−$166 million). • Juice is reduced (−$124 million). • Cheese is reduced (−$99 million). • $8 cash-value instrument for fruits and vegetables is added (+$272 million).
VII	• Juice is reduced (−$124 million). • Milk is reduced (−$75 million). • $10 cash-value instrument for fruits and vegetables is added (+$175 million).

Negative values (−) are cost reductions, positive values (+) are cost increases. There are a total of $581 million in increases and $239 million in decreases that are not reflected in this table.

3. Fruit and Vegetable Option

Due to the seasonal fluctuation in price and availability of fresh fruits and vegetables, and the inability to purchase them in uniform weight units, it is difficult to set quantity terms for fruits and vegetables and still estimate the cost of the WIC food packages. In order to accurately capture the cost of providing fresh fruits and vegetables in WIC Food Packages III-VII, the interim rule includes fruit and vegetable vouchers. Due to the administrative ease of implementation, the IOM recommended cash-value instruments be issued.[24] The IOM also recommended that states provide fruit and vegetable vouchers at the level of $10 per month for women and $8 per month for children. However, to achieve cost neutrality with the changes, FNS set the vouchers at the level of $8 per month for pregnant, partially breastfeeding and postpartum women and $6 per month for children in the year in which the food package revisions take effect. Fully breastfeeding women receive the recommended $10 voucher as part of WIC's breastfeeding promotion initiatives. Vouchers will be adjusted for inflation. The effects of inflation will be accrued annually, but not realized until the cumulative increase in the CPI is sufficient to raise the voucher's value by a dollar. Inflation is measured as the change in the Consumer Price Index (CPI) for fresh fruits and vegetables, as detailed in the interim rule.

4. Cost Estimate Methodology

Overview

The impacts of the interim rule on Federal expenditures are projected by comparing current policy to the interim rule with regard to total food costs. (Administrative funds are excluded; as noted above, no increase in funds will be provided to States or local clinics to implement this rule.)

For both current and new rules, food costs are calculated as the sum of the aggregate annual expenditures on each available food package. These expenditures are calculated separately as the product of:

- Participants—the number of women, infants, and children who receive each WIC food package;
- Food Prescriptions—the specific types and quantities of food contained in each package distributed to WIC participants; and
- Food Prices—the cost of the food items contained in WIC food packages.

The data sources and assumptions used in projecting each of these elements are summarized briefly here. Greater detail is provided on the pages that follow.

i. *Participation*—Participation statistics are remitted by State WIC agencies to FNS on a monthly basis. These are the product of routine recordkeeping by WIC clinics. They include counts of the number of women, infants, and children who receive WIC services. FNS collects additional program-relevant participant demographic characteristics such as age and life stage data through biennial data collections from WIC State agencies, as well as supplemental data on current breastfeeding practice. Participants are distributed as recipients of specific food packages under the current and new rules. Growth in program participation is based on projection of historical participation figures alone.

ii. *Prescriptions*—FNS gathers detailed information on the amount of food prescribed to individual WIC participants through the same survey of WIC providers that serves as FNS's source for participant demographics. FNS uses these current prescription records, plus a set of explicit assumptions about participant preferences, to generate prescription totals for each of the foods in the interim rule's revised packages.

iii. *Prices*—FNS tabulated average prices for each of the foods contained in the current and revised food packages from AC Nielsen's calendar year 2005 Homescan dataset. The final prices used in the cost estimate are these tabulated figures, adjusted for inflation and for rebates negotiated with infant formula manufacturers.

FNS has posted these participation, prescription, and price figures on its Web site (*http://www.fns.usda.gov*), in Microsoft Excel format. Separate figures are given for each of the current and proposed food packages, and for each of the five fiscal years 2008 through 2012.

The posted data will permit interested parties to reproduce the results of the cost estimate presented here. FNS encourages interested parties to examine the spreadsheet after reading the more detailed methodology that follows.[25]

a. Food Package Costs

i. Prescriptions

FNS's primary data source for participant prescription data is its 2002 WIC Participant and Program Characteristics (''PC2002'') dataset. PC2002 is the eighth in a series of biennial reports and datasets on WIC

[24] IOM, p. 172

[25] Additional information on the posted data, or on any other aspect of this cost estimate, is available from FNS on request.

participant and program characteristics. PC2002 employs the reporting system developed by FNS in 1992, which compiles key features of WIC participant information from State WIC agencies. The current system for reporting participant data is based on the automated transfer of an agreed upon set of data elements held in State management information systems. As part of the documentation needed to process the WIC PC participant data, each State also provides a food package code list which shows types and amounts of WIC food prescribed along with the State coding scheme.

PC2002 summarizes demographic characteristics of WIC participants nationwide as of April 2002, along with information on participant income and nutrition risk characteristics. PC2002 contains information on a near-census of WIC enrollees for whom food benefits were made available in WIC management information systems in April 2002.[26] The dataset and the report's tabulations are based on over 8 million records.[27]

FNS used prescription data from the PC2002 dataset to establish a baseline food cost and to estimate the costs of the package revisions. Actual participant-level prescriptions provide a useful starting point for this analysis. Data at the participant level captures the preferences and dietary restrictions of the current WIC population. Assuming little change in the distribution of the WIC population by life stage, food preference, or supplemental dietary need over the short term, the 2002 prescription data offers the best opportunity for estimating likely prescription amounts under the interim food package rule.[28] FNS estimated participant-specific prescription amounts for each of the foods in the packages other than infant formula. In an effort to reflect the interim rule's requirements that (1) participants be issued prescriptions at the maximum level per package, unless that level for one or more items is medically contraindicated, or the participant declines to accept the item; and (2) States may no longer adjust or ''tailor'' packages categorically, but that WIC professionals may do so, the following assumptions guided this analysis: [29]

• For foods that are part of both the current WIC packages and the revised packages:

• WIC participants currently prescribed none of that food will continue to be prescribed none (presumed medically contraindicated).

• If the participant's current prescription exceeds the interim rule's maximum for the item, then the participant will be prescribed the new maximum amount.

• If the participant's current prescription is less than the maximum amount allowed by the state under current rules, and less than the interim rule's amount, then the participant's prescription will remain unchanged.

• For foods newly added to the WIC packages by the interim rule:

• Generally, prescription rates are set to observed rates for comparable foods already contained in the WIC packages.[30]

• Foods newly added to the WIC packages as substitutes for standard WIC foods were prescribed to a subset of the WIC population equal to the percent of all low income U.S. households that currently purchase those items.[31] For example, market consumption data indicates that about 3% of U.S. households with WIC-eligible incomes purchased tofu, so 3% of WIC participants are assumed to be prescribed tofu.[32] Participants prescribed one of the new substitutes will be provided with the maximum required under the interim rule given any other substitutions allowed.

• Fruit and vegetable vouchers are assumed to be prescribed to all participants at the full amount.

This methodology tends to produce prescription estimates that are at or near the maximum quantities specified in the revised packages. (See Table 4.)

ii. Infant Formula and Rounding

In this analysis, infant formula and infant foods were treated slightly differently than the other foods. Using a micro-simulation program with PC2002 data to model prescription amounts for infant formula and foods would not account for ''rounding up''. Rounding up refers to the ability of state agencies to round up to the next whole container to provide the maximum infant formula allowance. State agencies may only include an option to round-up in infant formula contracts renewed on or after October 1, 2004. The interim rule extends this rounding option to infant foods (cereal, fruit and vegetables, and meat).

Since the PC2002 data do not reflect the costs of states rounding up, the cost estimates of the current and interim rule packages use a different approach to factor in the cost of states rounding up. Given current container sizes, rounding up is only required when issuing powder infant formula and infant fruit and vegetables. The maximum allowances for liquid concentrate infant formula, ready-to-feed infant formula, infant cereal and infant meat are evenly divisible by whole containers. To capture the effect of rounding, the following assumptions have been made:

• Current Food Packages I and II

• Estimated infant formula prescription amounts for Packages I and II incorporate rounding because the estimated reconstituted amounts fall below the package maximum. Estimated prescribed amounts for Packages I and II are set at the maximum amounts of 806 reconstituted liquid ounces for liquid concentrate and ready to feed infant formulas; for powder infant formula the current 8 pound limit is used.

• The reconstituted fluid ounces from powder infant formula is a weighted average of the powder container yield for the three infant formula brands with which state agencies have rebate contracts: Mead Johnson, Ross and Nestle (as determined by State agency contracts as of February 2007.) [33]

• Total infant formula allowance for each package is weighted by the percentage of infants receiving each of the three forms (liquid concentrate, ready to feed, and powder) as distributed in the WIC participant characteristic data set.

• Interim Food Packages I and II

• Infant Formula:

• All packages are set at the maximum monthly allowance for liquid concentrate, ready to feed and powder infant formulas as detailed in the interim rule.

• Powder infant formula is rounded up to meet the Full Nutritional Benefit (the maximum monthly allowance of reconstituted liquid concentrate), but to not exceed the maximum monthly powder infant formula limit.

• The reconstituted fluid ounces from powder infant formula is a weighted average of the powder container yield for the three formula brands with which state agencies have rebate contracts: Mead Johnson, Ross and Nestle (as determined by state agency contracts as of February 2007). [34]

• Interim Food Package I BF/FF–A assumes 100 percent powder infant formula. This is consistent with IOM recommendations.

• Total infant formula allowance for each package is weighted by the percentage of infants receiving each of the three forms (liquid concentrate, ready to feed, and powder) as distributed in the WIC participant characteristic data set.

• Infant Foods:

• Only Package II has infant foods. Container sizes are based on IOM assumptions: infant fruits and vegetables amounts are determined using Gerber

[26] For the month of April 2002, each State WIC agency was required to submit MDS data on a census of its WIC participants. All but 4 of the eighty-eight State WIC agencies (Mississippi, Choctaw Nation (OK), Eastern Shoshone and Rosebud Sioux) were able to provide sufficient data for tabulation in PC2002.

[27] Fewer participants—approximately 7.5 million—actually picked up their vouchers in April 2002 and were counted according to WIC regulations as participants for WIC administrative funding purposes.

[28] Due to insignificant differences in the PC2002 and PC2004 data, this analysis was not updated with the PC2004 dataset.

[29] The description that follows is a simplification of the process used to develop the estimated prescriptions.

[30] For example, the prescription rates for whole grain bread and bread substitutes are set to the observed prescription rates for cereal. The April 2002 Food Package IV cereal prescription rate was applied to Package IV bread prescriptions; the average Package V and Package VII cereal prescription rate was used to estimate Package V and Package VII bread prescriptions.

[31] Market consumption data is based on 2003 AC Nielsen Homescan survey data.

[32] This method of identifying general consumer preferences for particular items cannot be used to estimate the share of the infant population that consumes fresh bananas. It is assumed, then, that infants will be prescribed bananas as a substitute for jarred infant food fruits and vegetables at the average prescription rate for all foods across all food packages.

[33] The primary DHA/ARA enhanced powder formulas prescribed by WIC clinics for each of the manufacturers was used in computing the weighted average.

[34] The primary DHA/ARA enhanced powder formulas prescribed by WIC clinics for each of the manufacturers was used in computing the weighted average.

container sizes weighted over the 6 month package period.[35]

• Bananas are allowed to be substituted for infant fruit at the rate of 2 pounds per 16 ounces of fruit. The interim package cost estimate assumes 1.8 pounds of bananas as substitution.

The interim rule requires State agencies to issue at least the full nutritional benefit of infant formula but not more than the maximum monthly allowance for the food package category and infant feeding option. However, rounding up to the whole container to meet the full nutritional benefit under the interim rule, when compared to the maximum monthly allowance under the current rule, provides more containers per month, which in turn results in higher costs. In addition, under both the current and interim packages, the round up provision is assumed to apply in all States at full implementation beginning in FY08. Therefore, this analysis provides the most conservative estimate of the additional cost due to rounding (assuming container sizes do not change), as there is no way to accurately determine which States will elect to include a round up provision in their infant formula rebate contract and opt to round up going forward.

iii. Redemption rates

Tables 4 and 5 show the maximum amount per food category and estimated average prescribed amounts used to calculate costs for the food packages under the interim rule and under the current rule, respectively. Each table includes the individual food package component and its corresponding unit of measurement.

WIC foods are provided by quantity, except for the fruit and vegetable voucher. As stated in the interim rule, participants will be given a fruit and vegetable voucher with a fixed dollar value which can be used to purchase fruit and vegetables. Because the fruit and vegetable voucher provides WIC benefits in a different form than is currently used, different redemption behavior is to be expected. Therefore, in developing a cost estimate for the rule, it is assumed that these vouchers will be redeemed at a rate of 87.5 percent, which is consistent with an evaluation of a WIC fruit and vegetable intervention in Los Angeles in 2004.[36] Per participant, a redemption value of $5.25 for children, $7.00 for pregnant, partially breastfeeding and postpartum women, and $8.75 for fully breastfeeding women was included in the cost of the respective food package.

All other WIC foods are assumed to be redeemed at a 100% rate. The assumption of 100% redemption rates for other WIC foods reflects research findings which indicate that redemption rates for current WIC foods are high and vary little by food item (ranging from 94–99 percent).[37] Variation in the quantity of foods purchased by participants is reflected in the prescription rates. Thus a simplifying assumption of 100 percent redemption rates was used for WIC foods prescribed by quantity.

TABLE 4.—PRESCRIPTION ESTIMATES UNDER INTERIM RULE[38]

Food package	Units[39]	Maximum amount per food category[40]	Estimated average prescribed amount
Infants: Food Package I			
I–FF–A (0–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	806	842.65
I–FF–B (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	884	931.37
I–BF/FF–A (0–0.9 mo):			
Formula (post-rebate)[41]	reconstituted fluid oz	104	0.00
I–BF/FF–B (1–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	364	390.14
I–BF/FF–C (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	442	470.66
I–BF–A (0–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	0	0.00
I–BF–B (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	0	0.00
Infants: Food Package II			
II–FF (6–11.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	624	656.66
Cereal	oz	24	20.10
Baby fruits & vegetables	oz	128	105.37
Bananas	lb	.....	1.80
II–BF/FF (6–11.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	312	355.32
Cereal	oz	24	20.93
Baby fruits & vegetables	oz	128	105.37
Bananas	lb	.....	1.80
II–BF (6–11.9 mo):			
Cereal	oz	24	22.27
Baby fruits & vegetables	oz	256	225.03
Bananas	lb	.....	1.80
Infant food meat	oz	77.5	73.06
Children: Food Package IV			
IV–A (1–1.9 yrs):			
Juice	oz	128	127.59

[35] The prescription rates for infant cereal, fruit and vegetables, and meat are set to the average prescription rate of juice across all of the women's food packages. The estimate assumes that no state will authorize rounding of infant foods.

[36] Herman, Dena and Harrison, Gail, ''Are Economic Incentives Useful for Improving Dietary Quality among WIC participants and their Families?'' ERS, USDA, 2004.

[37] Food and Nutrition Service, U.S. Department of Agriculture, ''National Survey of WIC Participants'', October 2001.

TABLE 4.—PRESCRIPTION ESTIMATES UNDER INTERIM RULE [38]—Continued

Food package	Units [39]	Maximum amount per food category [40]	Estimated average prescribed amount
Milk (whole)	qt	16	13.01
Cheese	lb		0.96
Cereal	oz	36	34.39
Eggs	doz	1	1.00
Whole grain bread	lb	2	1.22
Other grains	lb		0.69
Beans, dried [42]	lb	1	0.30
Beans, canned	oz		19.54
Peanut butter	oz		6.27
Fruit and vegetable voucher.[43]	voucher ($)	6.00	5.25
IV–B (2–4.9 yrs):			
Juice	oz	128	127.59
Milk, fat-reduced	qt	16	13.01
Cheese	lb		0.96
Cereal	oz	36	34.39
Eggs	doz	1	1.00
Whole grain bread	lb	2	1.22
Other grains	lb		0.69
Beans, dried	lb	1	0.30
Beans, canned	oz		19.54
Peanut butter	oz		6.27
Fruit and vegetable voucher.[43]	voucher ($)	6.00	5.25
Women: Food Package V			
V:			
Juice	oz	144	143.40
Milk, fat-reduced	qt	22	16.90
Soy beverage	qt		1.66
Tofu	lb		0.05
Cheese	lb		0.97
Cereal	oz	36	35.09
Eggs	doz	1	1.00
Whole grain bread	lb	1	0.63
Other grains	lb		0.35
Beans, dried [44]	lb	1	0.60
Beans, canned	oz		38.63
Peanut butter	oz	18	13.41
Fruit and vegetable voucher.[43]	voucher ($)	8.00	7.00
Women: Food Package VI			
VI:			
Juice	oz	96	95.54
Milk, fat-reduced	qt	16	11.68
Soy beverage	qt		1.29
Tofu	lb		0.02
Cheese	lb		0.95
Cereal	oz	36	34.70
Eggs	doz	1	0.95
Beans, dried [44]	lb	1	0.23
Beans, canned	oz		14.69
Peanut butter	oz		9.06
Fruit and vegetable voucher.[43]	voucher ($)	8.00	7.00
Women: Food Package VII			
VII:			
Juice	oz	144	143.64
Milk, fat-reduced	qt	24	17.51
Soy beverage	qt		1.46
Tofu	lb		0.01
Cheese	lb		1.60
Cheese	lb	1	1.00
Cereal	oz	36	35.87
Eggs	doz	2	1.98
Whole grain bread	lb	1	0.63
Other grains	lb		0.35
Canned fish	oz	30	
Tuna	oz		22.44

TABLE 4.—PRESCRIPTION ESTIMATES UNDER INTERIM RULE [38]—Continued

Food package	Units [39]	Maximum amount per food category [40]	Estimated average prescribed amount
Salmon, sardines, mackerel	oz		6.11
Beans, dried [44]	lb	1	0.60
Beans, canned	oz		38.63
Peanut butter	oz	18	13.41
Fruit and vegetable voucher.[43]	voucher ($)	10.00	8.75

TABLE 5.—PRESCRIPTION ESTIMATES FOR CURRENT FOOD PACKAGES

Food package	Units [45]	Maximum amount per food category	Estimated average prescribed amount
Infants: Food Package I			
I—Fully breast-fed:			
Formula	reconstituted fluid oz	806	79.58
I—Partially breast-fed:			
Formula	reconstituted fluid oz	806	546.55
I—Fully formula-fed:			
Formula	reconstituted fluid oz	806	906.33
Infants: Food Package II			
II—Fully breast-fed 4–6.9 mo:			
Formula	reconstituted fluid oz	806	77.38
Juice	oz	96	34.09
Cereal	oz	24	20.63
II—Partially breast-fed 4–6.9 mo:			
Formula	reconstituted fluid oz	806	613.76
Juice	oz	96	53.80
Cereal	oz	24	16.60
II—Fully formula-fed 4–6.9 mo:			
Formula	reconstituted fluid oz	806	906.33
Juice	oz	96	41.93
Cereal	oz	24	16.99
II—Fully breast-fed 7–11.9 mo:			
Formula	reconstituted fluid oz	806	77.12
Juice	oz	96	81.15
Cereal	oz	24	22.28
II—Partially breast-fed 7–11.9 mo:			
Formula	reconstituted fluid oz	806	637.89
Juice	oz	96	69.30
Cereal	oz	24	21.08
II—Fully formula-fed 7–11.9 mo:			
Formula	reconstituted fluid oz	806	906.33
Juice	oz	96	76.42
Cereal	oz	24	20.27

[38] The only significant change to Food Package III in the interim rule is the proposed addition of foods to these recipients' packages when their medical circumstances allow it. The PC2002 data set indicates that about 1 percent of WIC participants receive Food Package III. FNS assumes that half of them will be able to and will choose to receive all of the other foods available to them under the proposed rule. Therefore, we do not calculate prescription rates for Food Package III.

[39] Units are expressed in: fluid ounces (fluid oz); ounces (oz); pounds (lb); quarts (qt); and, dozens (doz).

[40] Infant formula amounts are expressed in the full nutritional benefit amount of reconstituted liquid concentrate required for that age group. The interim rule details the maximum formula amounts allowed for each form of infant formula.

[41] Although partially breastfed infants will be allowed up to 104 reconstituted fluid ounces in the first month following birth in the interim rule, this analysis does not estimate a prescribed amount. For more discussion, see Section E, Item 3.

[42] Total ounces for dried beans, canned beans and peanut butter exceed 1lb because participants can substitute 64 ounces of canned beans or 18 ounces of peanut butter for 1lb of dried beans.

[43] Prescribed amount for fruit and vegetable vouchers is the redemption rate as discussed in 3a (iii) within this section.

[44] Total ounces for dried and canned beans exceed 1lb because participants can substitute 64 ounces of canned beans for 1lb of dried beans.

TABLE 5.—PRESCRIPTION ESTIMATES FOR CURRENT FOOD PACKAGES—Continued

Food package	Units [45]	Maximum amount per food category	Estimated average prescribed amount
Children: Food Package IV			
IV:			
Juice	oz	288	232.77
Milk	qt	24	16.58
Cheese	lb	.....	1.57
Cereal	oz	36	34.39
Eggs	doz	2.5	1.83
Beans, dried	lb	1	0.61
Peanut butter	oz	.....	6.27
Women: Package V			
V:			
Juice	oz	288	267.83
Milk	qt	28	20.94
Cheese	lb	.....	1.84
Cereal	oz	36	35.09
Eggs	doz	2.5	1.99
Beans, dried	lb	1	0.55
Peanut butter	oz	.....	7.29
Women: Package VI			
VI:			
Juice	oz	192	185.54
Milk	qt	24	17.15
Cheese	lb	.....	1.65
Cereal	oz	36	34.70
Eggs	doz	2.5	1.78
Women: Package VII			
VII:			
Juice	oz	336	319.32
Milk	qt	28	22.28
Cheese as milk substitute	lb	.....	1.65
Cheese	lb	1	1.00
Cereal	oz	36	35.87
Eggs	doz	2.5	2.00
Beans, dried	lb	1	1.20
Peanut butter	oz	18	13.41
Tuna	oz	26	24.75
Carrots	lb	2	1.99

iv. Food Prices

The price data used in this analysis is based primarily on tabulations from the calendar year 2005 AC Nielsen Homescan dataset.[46] Homescan data is captured by AC Nielsen panel members who record their purchases at home with handheld scanners. This type of panel data is well-suited to the WIC food package analysis. Unlike data gathered from point of sale scanners, panel data is potentially more comprehensive; it is able to capture purchases from retailers of every size and type, including supermarkets, convenience stores, drug stores, and vendors who lack checkout scanning equipment.[47] In addition, demographic information collected from Homescan panelists allows FNS to distinguish shoppers with WIC-eligible incomes from the rest of the population.

Homescan panels are geographically and demographically stratified random samples of individuals weighted to represent all U.S. households. A few of the demographic strata used by Nielsen are household size, household income, household race, and several characteristics of the head of household. Nielsen monitors and evaluates the performance of panelists, and data collected by panelists undergo various internal consistency checks. (No commenters on the proposed rule raised questions or identified potential limitations with regard to AC Nielsen Homescan data.)

FNS had access to two Homescan panel samples. The 39,000 panelists in the first sample record calendar year 2005 purchases of all scannable products. A smaller subsample of 8,200 panelists record purchases of all items, including random weight, non-UPC-coded items. Most of the foods in the current and interim rule food packages are UPC-coded, standard-weight, pre-packaged (i.e., scannable) items. For that reason, most of the prices computed by FNS are taken from purchases recorded by the larger Homescan panel.

FNS focused its analysis on purchases by individuals with WIC-level incomes. FNS generated its own subsamples of panelists whose reported household size and annual income indicate that they are WIC income-eligible. The income-eligible working dataset drawn from the larger of the two Homescan panels (used for most of FNS's price computations) contains 8,400 panelists. The working dataset drawn from the smaller

[45] Units are expressed in fluid ounces (fluid oz), ounces (oz), pounds (lb), quarts (qt), and dozens (doz).

[46] Prices displayed in Table 6 are inflated to FY 2006 levels using Bureau of Labor Statistics CPI estimates.

[47] Homescan data also captures purchases of non-UPC coded (non-scannable) random weight items such as fresh produce.

panel (used in few of FNS's price computations) contains 1,600 panelists.

a. Computation of Average Prices

For each of the food items in the current or interim packages, FNS computed the average price paid by households with WIC-eligible incomes. All prices are weighted by the aggregate volumes purchased by WIC-eligible product variety, container size, flavor, brand, etc.

Product descriptions captured by Nielsen sometimes lack the detail necessary to separate WIC-eligible items from non-eligible items. For this reason, the selection of products from the Nielsen datasets necessitates some compromise. The average prices computed by FNS and a brief description of FNS's product selection criteria are shown in Table 6.

Food prices obtained from AC Nielsen Homescan data are inflated to FY 2006 levels with CPI estimates published by Bureau of Labor Statistics. Food items or category-specific inflation estimates were used, when available. For years after FY 2006, food costs are inflated by the Office of Management and Budget's November, 2006 Thrifty Food Plan (TFP) index except for the fruit and vegetable vouchers which are inflated by the USDA's agricultural baseline projections for retail fruit and vegetable prices. (See Tables B and C in Appendix A for more detail.)

In each case, prices are computed only for products in container sizes consistent with current WIC regulations, typical state agency requirements, or the interim rule. Products identified as organic were excluded; states typically disallow organic varieties for cost reasons. FNS also adjusted infant formula prices to account for State agencies prescribing infant formulas enhanced with DHA/ARA, which tend to cost WIC more than non-enhanced infant formulas. This analysis provides a conservative estimate that assumes all states will issue enhanced infant formulas exclusively during the five-year period.[48]

TABLE 6.—WIC FOODS: FOOD ITEM, SELECTION CRITERIA, UNITS, AND PRICES PER UNIT

Food item	Retail sales database selection criteria	Units	Price per unit (inflated to FY06)
Infant formula (post rebate):[49]			
Powdered	Enhanced formulas[50] in powdered, liquid concentrate, and ready-to-feed forms.	oz	$0.0312
Weighted average of all forms.[51]		oz	0.0331
Infant cereal (post rebate)	Dry grains without added fruit or other flavors	oz	0.125
Infant food:			
Infant fruit and vegetables	Any texture; plain fruits or vegetables	oz	0.122
Infant food meat	All plain meat varieties	oz	0.346
Bananas	Fresh.	lb	0.456
Milk:			
Whole	Fresh dairy milk only, ½ gallon or gallon containers. Reduced fat includes skim milk and milk identified as 2% or lower milk fat.	qt	0.767
Reduced fat		qt	0.708
Cheese	Processed American and domestic natural cheddar, Colby, mozzarella, brick, Monterey jack. Sliced or un-sliced varieties.	lb	3.292
Yogurt	Quart sized containers and larger. Plain, vanilla, and fruit flavors.	qt	2.068
Tofu	Plain varieties	lb	1.467
Soy beverage	Half gallon or larger sizes. Plain varieties.[52]	qt	1.370
Juice	Apple, grape, orange, grapefruit, tomato. Unsweetened 100% juice.	oz	0.032
Adult cereal	Weighted average of cereals commonly prescribed by state WIC agencies and whole-grain varieties. Hot or ready-to-eat.	oz	0.159
Eggs	Large or medium, white. One-dozen containers only	doz	0.931
Beans:			
Dry	Most varieties, excluding string beans and immature peas. Not mixed with other foods.	lb	0.805
Canned		oz	0.037
Peanut butter	All forms and varieties. Not mixed with jelly	oz	0.094
Whole-grain bread	Wheat or grain bread	lb	1.422
Brown rice	Instant or regular	lb	1.178
Tuna	Chunk light, canned	oz	0.101
Other canned fish	Salmon, sardines and mackerel, canned	oz	0.114
Carrots	Fresh, frozen, canned	lb	0.953

[48] This assumption is based on the percentage of States exclusively issuing enhanced formula as of the February 2007 rebate contract summary of 94%. Based on current trends, FNS believes the percentage of States exclusively issuing enhanced formula will be 100% at the time of implementation.

[49] The average prices computed for infant formula are based on a range of container sizes commonly prescribed by WIC clinics. Formula prices, unlike the prices computed for other products in this analysis, are based on purchases by all individuals, not just those with WIC-eligible incomes. This has little consequence on the average price since more than half of the infant formula purchased in the U.S. is purchased by WIC participants.

[50] The term ''enhanced formulas'' means formulas that have been enhanced with two fatty acids, DHA and ARA.

[51] The weighted average price is used throughout this analysis except when pricing the value of formula prescriptions, under the interim rule, for partially breastfeeding infants age 0–3 months. For that one group, the interim rule recommends the prescription of powder alone.

[52] The price reflects purchases by individuals at all income levels. The dataset contained too few sample records when limited to purchases by individuals with WIC-eligible incomes.

v. Participant Projections

For this analysis, FNS makes the straightforward assumption that overall WIC participation will grow at a fixed 2.08% annual rate from February 2007 through the end of fiscal year 2012. 2.08% is a simple average of the annual observed rates of growth for each of the seven years that ended in January 2007. The participant data used to generate this growth rate is remitted by the States to FNS on a monthly basis. Participant data are reviewed for possible collection, transmission, or keying errors, but are otherwise unadjusted by FNS. The participant growth assumption used in this analysis is intended to illustrate the potential cost impacts of the revised food package over time and should not be construed as reflecting any policy or projection of future WIC participation.

Consistent with the IOM assumptions, we do not assume any changes in participation under the interim rule due to potential participants finding the revised package more or less attractive. (For more detail on participation levels by food package see Tables D and E in Appendix A.)

Many of the package changes were intended to encourage breastfeeding. However, it is important to note that this analysis does not provide an estimate of the increase in the number of breastfed infants or the additional length of time that infants will be breastfed. Due to the complex set of factors (demographic, social, environment, clinical, etc.) that influence breastfeeding duration, we are unable to estimate the number of infant/mother pairs that will switch food packages as their feeding practices change. This is consistent with the analysis provided by IOM.

The assumption of no change in breastfeeding patterns yields the most conservative cost estimate, as the net impact of increases in breastfed infants and breastfeeding women participants reduces the costs of this proposal. IOM conducted a sensitivity analysis by simulating possible shifts in participation rates. Shifting infant/mother pairs from the fully formula-fed package to the breastfeeding packages has the effect of moving infant/mother pairs from the most expensive set of packages to less expensive ones. A constant shift of 30 percent for one to 11 months of age from partial to full breastfeeding and a smaller range of shifts from full formula feeding to full breastfeeding (with an appropriate shift in the mother's classification) decreased the average package cost by nearly two percent.[53]

vi. Phased Implementation

The analysis assumes the rule takes effect in December 2007 (FY08). During the phase-in period, State agencies will be required to issue food benefits based on either the new food packages or current food packages but cannot combine the two. State agencies may also phase-in new food packages on a participant category basis.

Based on comments from State and local agencies, the interim rule's phased-in period has been revised to reflect an 18-month period, six months longer than the implementation period in the proposed rule. In the interim rule, the elimination of juice from the infant food packages is phased-in over 18 months, rather than six months as stated in the proposed rule, from publication of the rule.

All phase-in effects are reflected in the cost estimates contained in Table 2. This analysis assumes that the remaining provisions of the rule will be phased-in over the course of 18 months beginning December 2007. It is assumed, as above, that States will implement the provisions of the rule throughout the phase-in period; the effective rate of implementation is averaged over the course of 18 months.[54] The rule's phase-in schedule reduces total costs in FY 2008 by $11.1 million. FY 2009 costs are reduced by an estimated $1.1 million.

vii. State Cost Variation

This analysis is based on national average prescription and price data, which indicates that program-wide, the changes are cost neutral. States may vary somewhat in their implementation experiences, depending on how closely their prescription practices and prices correspond to the national averages. WIC funding rules help address these implementation issues. The food funding formula provides mechanisms for transferring funds from States which are not fully utilizing their grants to those with need for additional funding, and these mechanisms have been successfully used in the past to address variations in States' funding needs.

b. Administrative Costs

State agencies and local WIC providers will incur some new costs to implement the rule. A total of six State agencies provided comments on the proposed rule that specifically addressed costs associated with implementation. In general, these States believed that additional nutrition services and administration (NSA) funds would be needed to update and enhance MIS systems, train staff, participants and vendors, and update food lists. However, none of these commenters attempted to quantify their expected costs.

Many of the costs of implementation are similar in type to the routine recurring costs of operating a WIC program. These include training WIC clinic and administrative staff, and the periodic review and updating of WIC-approved food lists to assist vendors with their own staff training. Much of the training-related cost that State and local agencies will incur as a result of the rule will therefore displace similar recurring expenses during the phase-in period.

Other costs, such as modifying MIS systems, are non-routine expenses tied exclusively to the transition to a new set of food packages. However, MIS systems vary greatly across the States, and the effort needed to modify these systems will vary as well. FNS is not in a position to assess the level of work faced by State and local agencies. As a result, the cost of modifying State MIS systems cannot be estimated.

Despite their concerns, States were overwhelmingly supportive of the proposed changes; one State comment stated directly the judgment that the benefits from implementing the new packages will outweigh the effort needed to implement the changes.

FNS believes that State agencies and local WIC providers will be able to absorb the burden associated with implementing this rule within current NSA funds. State and local agencies have substantial flexibility in how they spend their NSA funds and may need to reprioritize or postpone some initiatives to undertake the implementation activities associated with this rule. Given the extremely positive response that this rule has received within the WIC community at both the State and local levels, we fully expect that implementation will be a priority.

E. Uncertainties

The estimate developed above is sensitive to changes in several key assumptions. A few of the most significant are discussed here.

1. Price Volatility in the Dairy Market

Instability in dairy prices over the last several years presents a major element of uncertainty in the cost estimate. However, the maximum amount of milk available in each of the food packages is reduced. The total amount of milk that can be replaced with more expensive substitutes has been reduced as well. These factors make the revised food packages less sensitive to dairy price fluctuations than the current WIC packages. FNS examined the impact of a 10% increase and a 10% decrease in the price of milk and cheese. Since the amount of milk and cheese is being reduced in the interim packages, higher dairy prices would produce a net savings. That is, while higher dairy prices would increase the absolute cost of the interim rule's food packages, an equivalent dairy price increase would increase the absolute cost of the current rule's packages by an even greater amount. Because the increased cost is relatively smaller under the interim rule, a dairy price increase will reduce the cost of adopting the rule; the $29.7 million savings under our baseline

[49] The average prices computed for infant formula are based on a range of container sizes commonly prescribed by WIC clinics. Formula prices, unlike the prices computed for other products in this analysis, are based on purchases by all individuals, not just those with WIC-eligible incomes. This has little consequence on the average price since more than half of the infant formula purchased in the U.S. is purchased by WIC participants.

[50] The term ''enhanced formulas'' means formulas that have been enhanced with two fatty acids, DHA and ARA.

[51] The weighted average price is used throughout this analysis except when pricing the value of formula prescriptions, under the interim rule, for partially breastfeeding infants age 0–3 months. For that one group, the interim rule recommends the prescription of powder alone.

[52] The price reflects purchases by individuals at all income levels. The dataset contained too few sample records when limited to purchases by individuals with WIC-eligible incomes.

[53] See IOM, p. 140.

[54] If the phase-in rate increases linearly, the rule would not be fully effective until July 2009. As a rough approximation, it is assumed that the effective rate of implementation of all provisions throughout FY 2008 averages 31 percent, with the remainder realized in the first eight months of FY 2009.

assumptions would become a $222.5 million savings. Similarly, lower dairy prices would increase the cost of adopting the interim rule. The impact of these price changes is summarized in the following table:

TABLE 7.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, ASSUMING A 10% INCREASE OR A 10% DECREASE IN DAIRY PRICES

[In $ millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cost/Savings of Rule with 10% Increase in Dairy Prices	–$5.8	–$30.8	–$48.4	–$61.8	–$75.7	–$222.5
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 10% Price Increase	10.8	38.2	45.9	47.9	50.0	192.8
Cost/Savings of Rule with 10% Decrease in Dairy Prices	15.8	45.5	43.3	34.0	24.4	163.1
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 10% Price Decrease	–10.8	–38.2	–45.9	–47.9	–50.0	–192.8

Negative values are cost reductions. Differences may not be exact due to rounding.

2. Assumed Preference for Soy Beverage

FNS estimates that as many as 10% of women will request soy beverage in place of liquid milk, if provided the choice.[55] The IOM cites high rates of lactose maldigestion and low rates of cultural acceptability of milk among African American and Asian women as important factors in its decision to introduce substitutes for milk.[56] African American women are represented in the WIC population at a level disproportionate to their share of the general population. In part for that reason, it is appropriate to assume a WIC participant preference for soy beverage at or near the upper range of estimates of soy beverage consumption in the U.S. as a whole. And because WIC participants may choose freely between milk and the more expensive soy substitute, without regard to cost, a natural response is consumption at a rate above the rate of those whose choice between the two products has personal cost impact.

FNS determined which women in the 2002 WIC prescription dataset were provided neither milk nor cheese. Those individuals, as a group, are assumed to be the WIC participants most inclined to request a prescription of soy beverage in place of milk. FNS' simulation model prescribes an amount of soy beverage to those individuals equal to the maximum allowed under their respective food packages. The program then substitutes soy beverage for the existing milk prescriptions of other WIC participants to the extent necessary to reach the 10% participant target. The program prescribes cheese and tofu before soy beverage; it does not replace the prescription of those milk substitutes with soy beverage. IOM took a similar approach in developing its cost estimate; it assumed that soy beverage would replace 10% of liquid milk prescriptions. In IOM's analysis, 8.7% of all milk and milk substitutes prescribed to women is in the form of soy beverage. FNS' methodology, which incorporates the more detailed data available from PC2002, results in a somewhat lower 7.6% substitution rate for soy beverage.

Precise data on which to base a soy beverage consumption rate for adult women is not available; it is not known whether consumption is appreciably higher or lower among women than among the population generally. For these reasons, the cost of the interim rule has been re-estimated using two alternate assumptions. If soy beverage is prescribed to only 5% of women, the average Package V, VI, and VII soy beverage substitution rate is 3.8%. Conversely if soy beverage is prescribed to approximately 15% of women, the average Package V, VI, and VII soy beverage substitution rate is 11.4%. Given the high cost of soy beverage relative to milk, this uncertainty would have cost implications.

TABLE 8.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, ASSUMING 5% OR 15% OF WOMEN ARE PRESCRIBED SOY BEVERAGE

[in $ millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cost/Savings of Rule with alternate 5% prescription rate	$1.5	–$4.9	–$17.2	–$29.2	–$41.6	–$91.4
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 5% Prescription Rate	3.5	12.2	14.7	15.3	16.0	61.6
Cost/Savings of Rule with alternate 15% prescription rate	8.4	19.5	12.1	1.4	–9.6	31.9
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 15% Prescription Rate	–3.5	–12.2	–14.7	–15.3	–16.0	–61.6

Negative values are cost reductions. Differences may not be exact due to rounding.

3. State option to provide formula for infants 0–0.9 months of age

The proposed rule put forth three options for infant feeding within the first month of birth: (1) Fully formula feeding; (2) fully breastfeeding; or (3) partially breastfeeding. The Proposed Rule did not allow formula to be provided for partially breasted infants under one month of age. This interim rule will allow partially breastfed infants in the first month of life to receive no more than 104 reconstituted fluid ounces of infant formula. Food Package V will be provided to mothers of these partially breastfeeding infants.

As shown in Table 9, the low amount of formula provided to partially breastfeeding infants under one month of age and the difference in the women's packages provides a cost savings when infant/mother pairs move to the partially breastfeeding packages during the first month after birth. FNS does not know how many fully formula feeding and fully breastfeeding mothers would opt to partially breastfeed during the infant's first month. However, given that the monthly cost of the food packages for a partially breastfeeding pair is less than the cost of the packages for either a fully breastfeeding or fully formula feeding pair, even a relatively

[55] AC Nielsen Homescan data indicate that approximately 10% of households with WIC-eligible incomes purchased some type of soy beverage during FY 2003. Soy beverage cannot be identified precisely in the AC Nielsen dataset. The 10% consumption figure is based on a broad product definition that includes soy beverage varieties that are not WIC-eligible under the interim rule. FNS sought to identify women who might request plain soy beverage if it is offered, cost-free, as a milk substitute. The estimate developed here assumes that this group will include some women who are current consumers of more popular soy beverage varieties.

[56] IOM, p. 119.

large shift to the partially breastfeeding packages does not threaten the overall cost neutrality of the interim rule.

TABLE 9.—COMBINED MONTHLY FOOD PACKAGE COSTS FOR INFANT/MOTHER PAIRS OF INFANTS 0–0.9 MONTHS, ASSUMING ONE CAN OF FORMULA FOR PARTIALLY BREASTFEEDING INFANTS IN FIRST MONTH

	Monthly food package costs (FY 2006)		
	Mother	Infant	Pair
Fully Formula Fed Feeding Pair	$31.23	$27.90	$59.14
Partially Breast Fed Feeding Pair	40.09	3.25	43.34
Cost/Savings of Moving to Partially Breast Fed Packages	$8.86	–$24.66	–$15.80
Fully Breast Fed Feeding Pair	51.30	0.00	51.30
Partially Breast Fed Feeding Pair	40.09	3.25	43.34
Cost/Savings of Moving to Partially Breast Fed Packages	–$11.21	$3.25	–$7.96

4. Prescription Assumptions for Whole Grain Bread and Bread Substitutes

Because whole grain bread and bread substitutes are new additions to the WIC food packages, FNS had to develop prescription assumptions for these foods without the benefit of historic prescription data. For purposes of this cost estimate FNS assumed that whole grain bread and bread substitutes would be prescribed to WIC participants at rates comparable to the observed prescription rates for breakfast cereal, the most closely related food in the current WIC packages.[57] For children's Package IV, FNS applied an observed cereal prescription rate of 95.4%. For packages V and VII, FNS applied an observed average rate of 97.7%.

Table 10 recomputes the cost effect of the interim rule under the alternate assumptions that the actual whole grain bread prescription rates for food packages IV, V, and VII will be as low as 90%, or as high as 100%.

TABLE 10.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS ASSUMING 90% AND 100% WHOLE GRAIN PRESCRIPTION RATES

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cost/Savings of Rule with 90% Whole Grain Prescription Rate	$2.6	$1.2	–$12.8	–$24.6	–$36.8	–$72.9
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 90% Prescription Rate	$2.4	$8.5	$10.3	$10.7	$11.2	$43.1
Cost/Savings of Rule with 100% Whole Grain Prescription Rate	6.8	13.7	5.1	–5.9	–17.3	2.5
Cost/Savings of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference Between Base Assumption and 100% Prescription Rate	–$1.8	–$6.4	–$7.7	–$8.0	–$8.4	–$32.3

5. Prescription Assumptions for Infant Food Fruits and Vegetables, and Infant Food Meat

Jarred infant foods, like whole grain breads, are new additions to the WIC food packages. Without the benefit of historic prescription rates for these foods, FNS had to look elsewhere for a prescription assumption to use in its cost estimate. FNS considered and rejected infant fruit juice prescriptions as a proxy, despite the fact that the jarred food benefit is comprised primarily of fruits and vegetables. Infant juice prescriptions fall well below 100%, largely because states recognize that the current package maximums exceed amounts recommended by current nutrition science. FNS believes that the interim rule's infant foods will be prescribed at a much higher rate. For this reason, FNS assumes that the jarred infant food prescription rate will match the observed 94.3% prescription rate for fruit juice across WIC's women's food packages.[58]

Table 11 recomputes the cost effect of the interim rule under the alternate assumptions that jarred infant food prescriptions will be as low as 90%, or as high as 100%.

TABLE 11.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS ASSUMING 90% AND 100% JARRED INFANT FOOD PRESCRIPTIONS

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cost/Savings of Rule with 90% Infant Food Prescription Rate	$2.1	−$2.7	−$14.6	−$26.5	−$38.8	−$80.4
Cost/Savings of Interim Rule	5.0	7.3	−2.5	−13.9	−25.6	−29.7
Difference Between Base Assumption and 90% Prescription Rate	2.8	10.0	12.0	12.6	13.1	50.6
Cost/Savings of Rule with 100% Infant Food Prescription Rate	8.7	20.4	13.1	2.5	−8.6	36.0
Cost/Savings of Interim Rule	5.0	7.3	−2.5	−13.9	−25.6	−29.7
Difference Between Base Assumption and 100% Prescription Rate	−3.7	−13.0	−15.6	−16.3	−17.1	−65.8

[57] Observed rates were taken from PC2002.

[58] Because the estimate assumes no rounding up of jarred infant foods, the net average prescription rate is slightly less than 94.3% for baby food fruits and vegetables. The average prescription for baby food meat is a full 94.3%, however, because the maximum monthly allowance of 77.5 oz is evenly divisible by the most commonly marketed jar size.

6. Changes in Current Food Package Sizes

The current and interim rules specify maximum food allowances in units of weight or volume. Several comments on the Proposed Rule asked that food allowances be expressed in package units, such as number of jars or containers, or that maximum weights and volumes match package sizes currently available. Specifically, issues were raised regarding current package sizes of juice, jarred infant foods and whole grain bread (further discussed in Section F, Item 2).

FNS recognizes that package sizes of WIC-eligible foods vary among manufacturers as well as regions. FNS also recognizes that manufacturers may change package sizes at any time. However, basing the maximum allowances in the interim rule on package sizes does not reduce the possibility of future changes in package sizes. This cost estimate does not incorporate any potential changes in package sizes but assumes that the maximum monthly allowance will be able to accommodate future changes to food packages sizes.

7. Uncertainties Summary

Table 12 presents two additional cost estimates that reflect the potential aggregated effect of these alternative assumptions. The first assumes that all of the cost increasing alternate assumptions discussed above are realized. The second assumes that all of the cost decreasing alternate assumptions are realized.

Scenario 1:

a. Jarred infant foods will be prescribed at a 100% rate to eligible infants

b. Whole grain bread and bread substitutes will be prescribed at a 100% rate

c. 15% of women will be prescribed some soy beverage as a milk substitute

d. Dairy prices will decrease by 10%

Scenario 2:

a. Jarred infant foods will be prescribed at a 90% rate to eligible infants

b. Whole grain bread and bread substitutes will be prescribed at a 90% rate

c. 5% of women will be prescribed some soy beverage as a milk substitute

d. Dairy prices will increase by 10%

The resulting combined range of uncertainty based on these assumptions is from a savings of $342 million to a cost of $359 million over five years, or −1.1% to +1.2% of total projected WIC program costs during that period, relative to the base assumptions.

TABLE 12.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS UNDER ALTERNATE EXTREME ASSUMPTIONS

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cost of Rule Under Scenario 1	$25.1	$78.4	$82.9	$75.4	$67.6	$329.3
Cost/Savings of Interim Rule	5.0	7.3	−2.5	−13.9	−25.6	−29.7
Difference Between Base Assumption and Scenario 1	−20.1	−71.0	−85.4	−89.3	−93.2	−359.1
Savings of Rule Under Scenario 2	−14.2	−60.3	−83.8	−98.8	−114.3	−371.4
Cost/Savings of Interim Rule	5.0	7.3	−2.5	−13.9	−25.6	−29.7
Difference Between Base Assumption and Scenario 2	19.2	67.6	81.3	84.9	88.7	341.6

F. Alternatives

Based on comments received, FNS considered several alternatives to the Proposed Rule. Some of these alternatives are discussed below. Each of these alternatives was ultimately rejected because FNS believes that a food package which reflects the IOM recommendations as closely as possible within the constraint of cost neutrality best reflects current scientific consensus on how to meet the dietary needs of WIC participants.

1. Include Yogurt as a Milk Substitute for Food Packages IV–VII

For Food Packages IV–VII, the IOM identified yogurt, tofu, and soy beverage as new milk substitutes to help ensure adequate calcium intake by those who cannot consume milk and to accommodate cultural preferences. Under the current rule cheese is also available as a milk substitute for up to three quarts of milk. IOM's recommendation specifically called for substituting one quart of yogurt or tofu for one quart of milk, and for limiting substitutions of cheese, yogurt, and tofu to four quarts of milk for Food Packages IV, V and VI, and six quarts of milk for Food Package VII. Soy beverage would be allowed for the entire milk allowance for Food Packages V, VI, and VII.

In order to maintain cost-neutrality, the Proposed Rule eliminated yogurt as a milk substitute, but allows the substitution of tofu, cheese and soy beverages up to the IOM maximum substitution level. As shown in Table 13, the price of yogurt, $2.07 per quart, as compared to $.71 per quart for reduced-fat milk, considerably increases the monthly cost of Food Packages IV–VII. Soy beverage and tofu also have higher per unit costs than milk; however, the estimated amount of tofu purchased by WIC participants is substantially lower than that of yogurt, and soy beverage is priced lower than yogurt ($.70 less per quart) making it a more cost-efficient substitute.

TABLE 13.—PROJECTED COST OF YOGURT AS A MILK SUBSTITUTE

Food package	Estimated average prescribed amount (qt.)	Price per unit (inflated to FY06)	Cost per food package
IV	0.86	$2.07	$1.78
V	0.84	2.07	1.74
VI	0.66	2.07	1.37
VII	0.83	2.07	1.72

The economic impact of including yogurt as a milk substitute is shown in Table 14. The five year cost of the rule, as modified by this alternative, is $384.0 million. The cost of the interim rule without yogurt is −$29.7 million (see Table 2). Therefore, the elimination of yogurt is retained in this interim rule.

TABLE 14.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, INCLUDING YOGURT AS A MILK SUBSTITUTE

[In $ millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Total Cost of Rule with Alternate Assumption	$28.2	$89.2	$95.9	$88.9	$81.8	$384.0
Total Cost of Interim Rule	5.0	7.3	−2.5	−13.9	−25.6	−29.7
Difference	−23.2	−81.9	−98.4	−102.8	−107.4	−413.7

Negative values are cost reductions. Differences may not be exact due to rounding.

2. Increase the Whole Grain Maximum Allowance for Women to 24 Ounce Increments

The Proposed Rule established a maximum of whole wheat bread or other whole grain—rice, barley (whole-grain), bulgur (cracked wheat), oatmeal and soft corn tortillas—monthly allowance of two pounds for children in Food Package IV and one pound for women in Food Packages V and VII. As recommended by the IOM, this is an enhancement to the current food packages which do not provide whole grains (except in breakfast cereals).

Some comments on the Proposed Rule stated that most bread loaves are not sold in one or two pound packages and participants would have difficulty purchasing the maximum monthly allowance. In order to accommodate current bread package sizes the maximum allowance for whole grains would need to be increased to 48 ounces for children and 24 ounces for women. Not only would changing the whole grain maximum allowance to accommodate package sizes currently available in the market significantly increase the overall cost of the interim rule (as shown in Table 15), it is not administratively practical for FNS to change maximum allowances based on current manufacturer packaging as they may vary by region and may change in future years. Therefore, whole grain maximum allowances set in the Proposed Rule are retained in this interim rule.

TABLE 15.—PROJECTED COST (+) / SAVINGS (-) ASSOCIATED WITH INCREASING THE WHOLE GRAIN MAXIMUM ALLOWANCE FOR WOMEN AND CHILDREN

[In $ millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Total Cost of Rule with Alternative	$25.2	$78.7	$83.3	$75.8	$68.0	$331.1
Total Cost of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference	–$20.2	–$71.4	–$85.8	–$89.7	–$93.7	–$360.8

Negative values are cost reductions. Differences may not be exact due to rounding.

3. Fresh Fruits and Vegetables for Infants

The Proposed Rule added jarred infant fruits and vegetables to Food Package II and jarred infant meats to Food Package II for fully breast fed infants. Food Package II also provides a maximum allowance of two pounds of fresh bananas. Comments on the Proposed Rule asked that fresh, canned or frozen fruits and vegetables be allowed in Food Package II instead of or as an option to jarred infant fruits and vegetables.

The estimate shown below assumes that cash value vouchers replace the interim rule's current infant fruit and vegetable provision. The initial value of the vouchers are set to the nearest whole dollar equivalent of the interim rule's recommended quantity of infant fruits and vegetables. It is assumed that the vouchers are redeemed and inflated in the same manner as the fruit and vegetable vouchers for women and children. In place of the interim rule's current provision, a fruit and vegetable voucher for infants would reduce the overall cost of the rule by $133.2 million over five years.[59]

TABLE 16.—PROJECTED COST (+) / SAVINGS (-) ASSOCIATED WITH ISSUING FRESH FRUIT AND VEGETABLE VOUCHERS TO INFANTS 6–11.9 MONTHS OF AGE

[In $ millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Total Cost of Rule with Alternative	$1.0	–$11.0	–$27.6	–$44.6	–$50.9	–$133.2
Total Cost of Interim Rule	5.0	7.3	–2.5	–13.9	–25.6	–29.7
Difference	4.0	18.3	25.0	30.8	25.3	103.5

Negative values are cost reductions. Differences may not be exact due to rounding.

The IOM recommended that commercial baby food fruits and vegetables and fresh bananas replace juice in the current package. The IOM encourages the continuation of full breastfeeding past 6 months, and recommended that higher amounts of baby food fruits and vegetables and baby food meats be provided to fully breastfeeding infants. Commercial baby foods were recommended due to nutrient content, availability in developmentally appropriate textures, and food safety.[60] In addition, the

[59] The savings is a consequence of two factors. The first is the assumption that fruit and vegetable vouchers for infants will be issued at their full values, but redeemed at a rate of just 87.5% (the same assumption that applies to fruit and vegetable vouchers for women and children in the baseline estimate.) The jarred fruit and vegetable benefit, by contrast, is assumed to be prescribed at an average rate equal to 94.3% of the package maximum (95.8% after rounding up to an even number of jars) and redeemed by beneficiaries at 100%. The second factor which makes the voucher option relatively less expensive is the voucher inflation and rounding rule which limits future increases to whole dollar increments. The effects of inflation are accrued annually, but not realized until the cumulative increase in the CPI is sufficient to raise the voucher's value by a dollar. See interim rule section 246.16(j).

[60] IOM, p. 103.

provision of commercial baby food fruits and vegetables helps ensure that these items are consumed by infants and not other household members. FNS believes that nutrition education provided by WIC staff related to appropriate food choices and home preparation of foods for infants is compatible with provision of jarred infant foods. Therefore, this alternative was rejected.

4. Soy Beverage Substitution for Children Without Medical Documentation

The Proposed Rule allowed State agencies to authorize, with medical documentation, soy-based beverages and tofu substitutions for milk for children in Food Package IV. Some comments received on the Proposed Rule expressed opposition to the medical documentation requirement citing that it creates barriers for children to obtain foods that meet cultural needs.

Requiring medical documentation for dairy alternatives ensures that a health care provider is aware that children may be at nutritional risk when milk is replaced by other foods. The IOM recommended that soy beverage not be made available to children to satisfy participant preference in the absence of medical need.

Research suggests that up to 4% of children consume some sort of soy beverage and that that percentage increases as they get older.[61] FNS does not collect data on the percentage of WIC children who request milk alternatives, and the percentage of children that would request soy beverage in place of milk is difficult to estimate. However, given the price differential between reduced fat milk ($.71 per quart) and soy beverage ($1.37 per quart), and the number of WIC-eligible children, substitution of soy beverage for milk without medical documentation could result in a significant increase to the overall cost of the rule.

On both economic grounds and on the expert recommendation of the IOM, FNS retains the medical documentation requirement for soy beverage in the children's food package.

G. Market Share Analysis

The changes in the quantities and types of foods provided by the WIC program should result in changes in the quantities and types of foods that WIC participants buy with their WIC vouchers. The complete market impact of this rule is difficult to accurately quantify because we do not know the extent to which WIC foods substitute for purchases WIC participants would have otherwise made with their own funds. Empirical research on this issue is inconclusive.[62] Because of this uncertainty, we present two scenarios. In the first (Table 17), we assume full substitution—that is, all foods purchased with WIC vouchers under the current packages would otherwise be purchased with the participants' own funds under the interim rule. In the second (Table 18), we assume the alternate—that none of the foods purchased with WIC vouchers would otherwise be purchased with the participants' own funds. In both scenarios, the potential impact of the interim rule on the total market size for most foods is relatively modest, as is the impact on WIC's share of the total market.

We estimated the total value of WIC sales[63] for each food item and the total annual U.S. retail sales for each WIC food item. To estimate WIC sales, we multiplied the average unit price per food item by an estimate of the quantity of food purchased by WIC participants (the average estimated participation multiplied by the amount of food prescribed to a participant throughout the course of a year).[64] To estimate total annual sales, 2005 AC Nielsen Productscan data was used to calculate total volume and annual grocery store sales of the different categories of food products.[65] We used calendar year (CY) 2005 participation, cost and sales estimates for our market share analysis. Although the rule does not take effect until FY2008, we cannot reliably make projections about the overall sales of WIC food items for the next two years; we believe the CY2005 data provides a good indication of the relative impact of the rule's changes on each food item.

It is important to note that this approach understates the size of the total markets for WIC food items (and thus overstates both WIC's market share and the potential impact of the changes on WIC food markets), because the data used to estimate total market size is limited to grocery store sales. Data on sales through other outlets was not available, but would likely significantly increase the estimated size of the total market for WIC foods.

TABLE 17.—ESTIMATED TOTAL ANNUAL SALES, WIC SALES, AND WIC PERCENT OF MARKET FOR CURRENT FOOD PACKAGE AND INTERIM FOOD PACKAGE, ASSUMING FULL SUBSTITUTION OF WIC FOODS IN TOTAL ANNUAL SALES, CY2005

WIC food item	Current food package			Interim food package		
	Estimated total annual sales ($)	Estimated total WIC sales ($)[66]	WIC % of market[67]	Estimated total annual sales ($)	Estimated total WIC sales ($)	WIC % of market[67]
Formula	3,600,257,587	2,533,590,541	70.4	3,600,257,587	2,025,525,861	56.3
Beans	874,176,643	32,179,354	3.7	874,176,643	82,632,904	9.5
Peanut butter	1,133,273,041	40,935,940	3.6	1,133,273,041	54,492,515	4.8
Milk	16,043,036,006	975,287,323	6.1	16,043,036,006	712,840,678	4.4
Adult cereal	9,697,058,781	399,336,655	4.1	9,697,058,781	399,336,655	4.1
Juice	14,203,760,671	556,756,383	3.9	14,203,760,671	281,143,313	2.0
Rice	737,198,377	0	.....	737,198,377	43,442,898	5.9
Fruit and vegetables	15,761,934,300	7,512,820	0.0	15,761,934,300	431,691,818	2.7
Eggs	2,959,401,900	120,241,255	4.1	2,959,401,900	67,192,054	2.3
Cheese	12,329,016,799	386,210,204	3.1	12,329,016,799	247,273,210	2.0
Bread	17,028,860,749	0	.....	17,028,860,749	93,740,564	0.6
Canned fish	1,917,928,393	9,191,549	0.5	1,917,928,393	10,885,456	0.6
Infant cereal[68]	.....	56,640,143	.....	.....	42,641,463	.....
Baby food[68]	.....	0	.....	.....	185,899,515	.....
Tofu[68]	.....	0	.....	.....	1,088,288	.....
Soy beverage[68]	.....	0	.....	.....	49,561,168	.....

[61] United Soybean Board, Current Knowledge on Soy and Children's Diets, August 2004, prepared by N. Chapman and Associates. *http://www.soyfoods.org/wp-content/uploads/2006/11/soy_and_child_diet.pdf.*

[62] Mary Kay Fox, William Hamilton, Biing-Hwan Lin, *Effects of Food Assistance and Nutrition Programs on Nutrition and Health, Volume 3, Literature Review, Economic Research Service,* U.S. Department of Agriculture, Food Assistance and Nutrition Research Report Number 19–3. October 2004.

[63] WIC sales refer only to sales produced by the use of WIC vouchers, not the total sales from all purchases made by WIC participants.

[64] Prescription amounts used in this market share analysis are the same as those used in the cost analysis.

[65] Total annual sales include foods that fit in the category of food product, but may not be WIC eligible (i.e., within cereal, total sales include cereals of any sugar content and cereals without whole grains). This was done to accurately portray the impact of the proposed food package on the whole market and not just the narrow sub-market of ''WIC eligible'' food. Because AC Nielsen Productscan data covers approximately 70% of the total grocery market, total annual sales were adjusted by dividing by 70%.

TABLE 17.—ESTIMATED TOTAL ANNUAL SALES, WIC SALES, AND WIC PERCENT OF MARKET FOR CURRENT FOOD PACKAGE AND INTERIM FOOD PACKAGE, ASSUMING FULL SUBSTITUTION OF WIC FOODS IN TOTAL ANNUAL SALES, CY2005—Continued

WIC food item	Current food package			Interim food package		
	Estimated total annual sales ($)	Estimated total WIC sales ($) [66]	WIC % of market [67]	Estimated total annual sales ($)	Estimated total WIC sales ($)	WIC % of market [67]
Total	96,285,903,247	5,117,882,167	6.4	96,285,903,247	4,729,388,359	4.6

TABLE 18.—ESTIMATED TOTAL ANNUAL SALES, WIC SALES, AND WIC PERCENT OF MARKET FOR CURRENT FOOD PACKAGE AND INTERIM FOOD PACKAGE, ASSUMING NO SUBSTITUTION OF WIC FOODS IN TOTAL ANNUAL SALES, CY2005

WIC food item	Current Food Package			Interim food package		
	Estimated total annual sales ($)	Estimated total WIC sales ($) [69]	WIC % of market [70]	Estimated total annual sales ($)	Estimated total WIC sales ($)	WIC % of market [70]
Formula	3,600,257,587	2,533,590,541	70.4	3,092,192,907	2,025,525,861	65.5
Beans	874,176,643	32,179,354	3.7	924,630,192	82,632,904	8.9
Peanut butter	1,133,273,041	40,935,940	3.6	1,146,829,616	54,492,515	4.8
Milk	16,043,036,006	975,287,323	6.1	15,780,589,361	712,840,678	4.5
Adult cereal	9,697,058,781	399,336,655	4.1	9,697,058,781	399,336,655	4.1
Juice	14,203,760,671	556,756,383	3.9	13,928,147,601	281,143,313	2.0
Rice	737,198,377	0		780,641,275	43,442,898	5.6
Fruit and vegetables	15,761,934,300	7,512,820	0.0	16,186,113,298	431,691,818	2.7
Eggs	2,959,401,900	120,241,255	4.1	2,906,352,699	67,192,054	2.3
Cheese	12,329,016,799	386,210,204	3.1	12,190,079,804	247,273,210	2.0
Bread	17,028,860,749	0	.....	17,122,601,313	93,740,564	0.5
Canned fish	1,917,928,393	9,191,549	0.5	1,919,622,300	10,885,456	0.6
Infant cereal [71]	.....	56,640,143	.....	.....	42,641,463	
Baby food [71]	.....	0	.....	.....	185,899,515	
Tofu [71]	.....	0	.....	.....	1,088,288	
Soy beverage) [71]	.....	0	.....	.....	49,561,168	
Total	96,285,903,247	5,117,882,167	6.4	95,674,859,149	4,729,388,359	4.7

It is important to note that the numbers in Tables 17 and 18 differ from the costs reported in Table 3 mainly because the market analysis uses pre-rebate formula and cereal costs as compared to the cost estimate which factors in the post-rebate savings. In addition, the data in the market impact analysis is based on 2005 participation, whereas the cost estimate uses the projected participation estimates for 2008 and beyond. Finally, the market analysis does not take into account any phase-in period.

Overall, the changes in the WIC food package will have a modest impact on WIC sales as a percentage of total annual sales of these food item categories. Market shares are slightly higher under the no substitution scenario. (See Table 17.) For the foods that are currently part of the food package, the interim food package has the largest dollar impact on the infant formula and beans markets. Under the interim food package, the market share of WIC sales for infant formula is less than with the current food package. The decline is mostly due to a reduction in the maximum allowance of infant formula for partially breastfed and fully formula-fed infants 6 through 11 months of age (Food Package II FF). The market share of beans will increase from 3.7% to 8.9%–9.5%. The majority of this impact stems from the fact that participants can now substitute canned beans, which are more expensive, for dried beans.

The other markets that will be impacted and are currently part of the food package are the milk, juice, eggs, cheese, peanut butter, and fruit and vegetable markets. The market share of these items will change slightly. The items that will have decreases are milk, juice, eggs, and cheese, while the items that will have increases are peanut butter, and fruits and vegetables. The WIC market share of milk will change from 6.1% to 4.4%–4.5% due to lower prescription amounts and the ability of participants to substitute tofu, and soy beverage for fluid milk. The decline in cheese is also due to these reasons. The share of the juice market shifts from 3.9% to 2.0%,

[66] Total WIC sales reported here are less than the $5.3 billion (pre-rebate) reported in WIC 2005 food costs. The estimates of total WIC food sales for the current and proposed packages are likely to be lower than actual WIC food expenditures because the AC Nielsen Productscan and Homescan data used to estimate food prices may not fully capture the higher prices charged by WIC vendors such as small, non-chain, convenience and ''WIC-Only'' stores.

[67] ''WIC % of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

[68] We were unable to assess the market impact of infant cereal, baby food, tofu and soy beverage items in the WIC food package. These items are not included in the Productscan data; however, we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

[69] Total WIC sales reported here are less than the $5.3 billion dollars (pre-rebate) reported in WIC 2005 food costs. The estimates of total WIC food sales for the current and proposed packages are likely to be lower than actual WIC food expenditures because the AC Nielsen Productscan and Homescan data used to estimate food prices may not fully capture the higher prices charged by WIC vendors such as small, non-chain, convenience and ''WIC-Only'' stores.

[70] ''WIC% of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

[71] We were unable to assess the market impact of infant cereal, baby food, tofu and soy beverage items in the WIC food package. These items are not included in the Productscan data; however, we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

while the share of the egg market shifts from 4.1% to 2.3%. Both of these declines stem from changes in the package that are designed to improve the overall nutritional benefit of the package. Participants will be receiving less juice, but more fruits and vegetables. The amount of eggs will be lowered consistent with recommendations of the IOM on cholesterol intake and to permit a wider variety of foods to be included in the WIC food packages. The market share of peanut butter will increase from 3.6% to 4.8%. Lastly, the WIC percent of the fruit and vegetable market will increase from 0% to 2.7%. This is due to the fact that the only fruit or vegetable that WIC participants currently receive are carrots and only exclusively breastfeeding mothers receive them. Under the new rule, the fruit and vegetable vouchers will encourage WIC's women and children participants to consume these foods.

For the foods being added to the WIC food package, the WIC market share percentages are, for the most part, small, 0.5%–0.6% and 5.6%–5.9%, for bread and rice, respectively. We were unable to assess the market impact of baby food, infant cereal, tofu and soy beverage. These items are not included in the Productscan data; however, we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

Given the changes in market share and potential changes in total market demand, changes in the purchases of WIC-provided foods could theoretically have an impact on prices for WIC foods. However, because the demand impacts for most foods are small and impossible to estimate precisely, we are unable to determine the potential price effects.

WIC purchases of infant formula represent a larger share of the total market of WIC-provided foods than do WIC purchases of the other WIC foods. The Economic Research Service (ERS) recently studied the relationship between retail prices of infant formula and demand for WIC-provided formula. ERS findings suggest that the amount of WIC-provided formula purchased has an effect on retail prices; specifically, larger WIC demand leads to higher retail prices for non-WIC consumers who purchase the state's contract brand of formula.[72] ERS estimates, for example, that a non-WIC family in a State whose WIC program serves two-thirds of all formula fed infants would spend roughly $3 to $5 more, per month, on contract brand powder formula for their child than a family in a State whose WIC program serves just half of formula-fed infants. However, it is difficult to project the exact impact of the reduction in WIC demand for infant formula under the interim rule based on this study. The ERS analysis was limited to formulas sold in supermarkets, whereas projecting the impact of the rule on overall demand would require an analysis of the behavior of non-WIC consumers, which have more diverse purchasing habits. For instance, many non-WIC formula purchases are at prices below that of supermarkets from mass merchandisers that do not participate in the WIC Program. In addition, the change in WIC formula sales as a percentage of retail grocery sales due to this interim rule (from 70.4% to 56.3%–65.5%) is smaller than the changes in WIC sales examined in the ERS report (from 50% to 66%).

Appendix A: Additional Cost Estimate Assumptions

TABLE A1.—FY 08 FOOD PACKAGE COSTS

[Monthly costs, post-rebate]

Food package	Current	Interim
I—0 to 5.9 month infants[73]	$24.49	$20.84
II—6 to 11.9 month infants	33.32	41.06
III—Participants with qualifying conditions[74]	0.00	21.07
IV—Children 1 to 4.9 years	35.18	34.49
V—Women: Pregnant and partially breastfeeding	39.82	42.66
VI—Women: Postpartum	32.15	33.38
VII—Women: Fully breastfeeding	51.23	54.56

TABLE A2.—ANNUAL CURRENT FOOD PACKAGE COSTS (POST-REBATE) FY08–FY12

[In $ millions]

Food package	FY08[75]	FY09	FY10	FY11	FY12
I	$272.18	$342.02	$357.69	$373.79	$390.35
II	331.53	416.59	435.68	455.29	475.46
III[74]	0.00	0.00	0.00	0.00	0.00
IV	1,454.11	1,827.21	1,910.94	1,996.95	2,085.41
V	456.17	573.22	599.49	626.47	654.22
VI	206.42	259.39	271.27	283.48	296.04
VII	169.47	212.95	222.71	232.74	243.05

[72] Victor Oliveira, Mark Prell, David Smallwood, Elizabeth Frazão, *WIC and the Retail Price of Infant Formula,* Economic Research Service, U.S. Department of Agriculture, May 2004, p. 60.

[73] To permit a direct comparison against the current rule, average food package costs under the current rule are weighted by the number of children who fall into the age categories that correspond to the interim rule food packages. Although the current cost figures for infants do not correspond to the food package definitions under the interim rule, the average costs of foods prescribed to infants within the stated age categories are correct. That is, the cost of monthly food prescriptions to infants up to 5 months old is lower under the interim rule by approximately $3.60.

[Current Food Package I is for infants 0–3.9 months of age; interim Food Package I is for infants 0–5.9 months of age. Current Food Package II is for infants 4–11.9 months of age; interim Food Package II is for infants 6–11.9 months of age. Food package costs are weighted by the respective age groups as shown in Tables D and E in Appendix A.]

[74] Current Food Package III is $0 because the analysis only considers the incremental costs associated with the proposal. Interim Food Package III represents the incremental costs as a result of the changes in the proposed rule. FNS does not have comprehensive data on the current cost of medical foods provided in Food Package III. However, the medical foods associated with this package are assumed to stay the same under the current and interim rules. The incremental cost is extending foods from other packages to Food Package III recipients.

TABLE A3.—ANNUAL INTERIM FOOD PACKAGE COSTS (POST-REBATE) FY08–FY12

[In $ millions]

Food package	FY08 [75]	FY09	FY10	FY11	FY12
I	$259.58	$297.59	$304.29	$317.98	$332.07
II	355.40	500.78	536.88	561.05	585.90
III [74]	3.02	10.64	12.79	13.36	13.95
IV	1,435.66	1,756.20	1,818.93	1,894.24	1,971.64
V	462.71	594.06	622.09	647.66	673.95
VI	206.88	259.75	270.33	281.14	292.25
VII	171.61	219.70	229.93	239.41	249.14

TABLE B.—CY05 TO FY06 PRICE INFLATION ASSUMPTIONS—FOOD SPECIFIC CPIS

Food item	Inflation rate (percent)
Infant Formula	1.3
Infant cereal	−1.7
Infant food fruit and vegetables	2.5
Infant food meat	2.5
Bananas	4.2
Milk:	
Whole	−0.7
Reduced fat	−0.5
Cheese	−0.9
Yogurt	−0.3
Tofu	1.3
Soy beverage	1.3

TABLE B.—CY05 TO FY06 PRICE INFLATION ASSUMPTIONS—FOOD SPECIFIC CPIS—Continued

Food item	Inflation rate (percent)
Juice	3.9
Adult cereal:	
Whole grain	−1.7
Current WIC cereals	−1.7
Eggs	2.9
Beans:	
Dry	1.0
Canned	1.0
Peanut butter	0.9
Whole grain bread	3.2
Brown rice	3.7
Tuna	2.5
Canned Fish	2.5
Carrots	3.4

TABLE C.—INFLATION ASSUMPTIONS, FY05–FY12

Year	Thrifty food plan (% change)	CPI: fruit and vegetables (% change)
FY05*	−0.32	3.74
FY06*	−0.75	4.76
FY07*	2.05	1.03
FY08	2.62	1.96
FY09	2.58	1.88
FY10	2.45	1.92
FY11	2.37	1.92
FY12	2.30	1.92

*Actual WIC Food Package Inflation as of January 2007.

TABLE D.—PROJECTED PARTICIPATION IN THE WIC PROGRAM, BY FOOD PACKAGE TYPE: CURRENT PACKAGES

Food package	FY08	FY09	FY10	FY11	FY12
I					
0–3.9 month Infants:					
Fully formula-fed	426,994	435,882	444,956	454,218	463,674
Partially breast-fed	112,821	115,169	117,567	120,014	122,513
Fully breast-fed	199,996	204,159	208,409	212,747	217,176
Subtotal	739,810	755,211	770,932	786,980	803,362
II					
4–5.9 month Infants:					
Fully formula-fed	283,539	289,441	295,466	301,617	307,895
Partially breast-fed	31,566	32,223	32,894	33,579	34,278
Fully breast-fed	56,262	57,433	58,628	59,849	61,095
6–11.9 month Infants:					
Fully formula-fed	840,456	857,952	875,811	894,043	912,654
Partially breast-fed	56,380	57,554	58,752	59,975	61,224
Fully breast-fed	98,114	100,156	102,241	104,369	106,542
Subtotal	1,366,316	1,394,759	1,423,793	1,453,432	1,483,687
III					
Participants with qualifying conditions [76]	92,470	94,395	96,360	98,366	100,414
IV					
Children: 1–4.9 years	4,133,746	4,219,798	4,307,640	4,397,311	4,488,849
V					
Women:					
Pregnant	958,254	978,202	998,564	1,019,351	1,040,571
Partially breastfeeding	187,421	191,323	195,305	199,371	203,521
Subtotal	1,145,675	1,169,524	1,193,870	1,218,722	1,244,092

[75] For both the current and interim rules, FY 08 figures represent just 10 months (the interim rule will be effective for just 10 months of the year.) The interim rule figures are not fully phased-in until FY 2010.

TABLE D.—PROJECTED PARTICIPATION IN THE WIC PROGRAM, BY FOOD PACKAGE TYPE: CURRENT PACKAGES—Continued

Food package	FY08	FY09	FY10	FY11	FY12
VI					
Women: Postpartum	642,045	655,410	669,054	682,981	697,198
VII					
Women: Fully breastfeeding	330,813	337,700	344,730	351,906	359,231
Total	8,450,876	8,626,796	8,806,378	8,989,698	9,176,834

TABLE E.—PROJECTED PARTICIPATION IN THE WIC PROGRAM, BY FOOD PACKAGE TYPE: INTERIM RULE

Food package	FY08	FY09	FY10	FY11	FY12
I	.....	.....	.....	.....	.....
0–3.9 month Infants:					
Fully formula-fed	426,994	435,882	444,956	454,218	463,674
Partially breast-fed	112,821	115,169	117,567	120,014	122,513
Fully breast-fed	199,996	204,159	208,409	212,747	217,176
4–5.9 month Infants:					
Fully formula-fed	283,539	289,441	295,466	301,617	307,895
Partially breast-fed	31,566	32,223	32,894	33,579	34,278
Fully breast-fed	56,262	57,433	58,628	59,849	61,095
.					
Subtotal	1,111,176	1,134,307	1,157,920	1,182,024	1,206,630
II					
6–11.9 month Infants:					
Fully formula-fed	840,456	857,952	875,811	894,043	912,654
Partially breast-fed	56,380	57,554	58,752	59,975	61,224
Fully breast-fed	98,114	100,156	102,241	104,369	106,542
Subtotal	994,950	1,015,662	1,036,805	1,058,387	1,080,420 *
III					
Participants with qualifying conditions [76]	92,470	94,395	96,360	98,366	100,414
IV					
Children:					
1–1.9 years	1,364,955	1,393,369	1,422,374	1,451,984	1,482,209
2–4.9 years	2,768,791	2,826,428	2,885,265	2,945,327	3,006,639
Subtotal	4,133,746	4,219,798	4,307,640	4,397,311	4,488,849
V					
Women:					
Pregnant	958,254	978,202	998,564	1,019,351	1,040,571
Partially breastfeeding	187,421	191,323	195,305	199,371	203,521
Subtotal	1,145,675	1,169,524	1,193,870	1,218,722	1,244,092
VI					
Women: Postpartum	642,045	655,410	669,054	682,981	697,198
VII					
.					
Women: Fully breastfeeding	330,813	337,700	344,730	351,906	359,231
Total	8,450,876	8,626,796	8,806,378	8,989,698	9,176,834

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[76] The interim rule moves infants with qualifying medical conditions from Food Packages I and II to a revised Food Package III. The number of Package III beneficiaries shown here includes those who are reassigned to Package III as a result of the interim rule. Individuals who are currently Package III recipients, and those who are newly moved to Package III by the interim rule, are affected differently by the interim rule than are other participants. The current and newly assigned Package III recipients are also handled differently than other participants throughout this cost analysis. For purposes of clarity and consistency, all of these individuals are shown as Package III recipients from the first through the final steps of the analysis.

Federal Register

Thursday,
December 6, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species, or to remove species from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms, previously called candidate forms) for each candidate species.

Overall, this CNOR recognizes 5 new candidates, changes the LPN for 29 candidates, and removes 4 species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR, the new number of species that are candidates for listing is 280.

We request additional status information that may be available for the 280 candidate species identified in this CNOR. We will consider this information in preparing listing documents and future revisions to the notice of review, as it will help us in monitoring changes in the status of candidate species and in management for conserving them. We also request information on additional species that we should consider including as candidates as we prepare future updates of this notice.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period September 26, 2006, through September 30, 2007.

DATES: We will accept comments on the most recent Candidate Notice of Review at any time.

ADDRESSES: Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may mail or fax comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (facsimile 703/358–2171). Written comments and materials we receive in response to this notice will be available for public inspection by appointment at the Division of Conservation and Classification (for comments of a general nature only) or at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.**

Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our Internet Web site (*http://endangered.fws.gov/candidates/index.html*).

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (telephone 703–358–2171; facsimile 703–358–1735). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As defined in section 3 of the Act, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions.

We maintain this list of candidates for a variety of reasons: to notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to solicit input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION** or visit our Internet Web site, *http://endangered.fws.gov/candidates/index.html*.

Previous Notices of Review

We have been publishing candidate notices of review (CNOR) since 1975. The most recent CNOR (prior to this CNOR) was published on September 12, 2006 (71 FR 53755). CNORs published since 1994 are available on our Internet Web site, *http://www.fws.gov/endangered/candidates/index.html*. For copies of CNORs published prior to 1994, please contact the Division of

Conservation and Classification (see **ADDRESSES** section above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)). As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority ranking guidance system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. When evaluating the magnitude of the threat(s) facing the species, we consider information such as: the number of populations and/or extent of range of the species affected by the threat(s); the biological significance of the affected population(s), taking into consideration the life history characteristics of the species and its current abundance and distribution; whether the threats affect the species in only a portion of its range, and if so the likelihood of persistence of the species in the unaffected portions; and whether the effects are likely to be permanent.

As used in our priority ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent'' and is not a measure of how quickly the species is likely to become extinct if the threats are not addressed; rather, immediacy is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species intrinsically vulnerable to certain types of threats but not known to be presently facing such threats.

Our priority ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in a genus that has more than one species); and subspecies, distinct population segments of vertebrate species, and species for which listing is appropriate in a significant portion of their range.

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threat(s) is of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (e.g., if the species is the only member of a genus, it would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies, DPS, or significant portion of the range to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have sufficient information to prepare a proposed rule to list it because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the guidance is available on our Web site at: *http://www.fws.gov/endangered/policy/index.html*. For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN chart and a detailed explanation of the rationale for the determination of the magnitude and imminence of threat(s) and assignment of the LPN; that information is summarized in this CNOR.

This revised notice supersedes all previous animal, plant, and combined candidate notices of review.

Summary of This CNOR

Since publication of the CNOR on September 12, 2006 (71 FR 53756), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency-list any of these species, particularly species with high priorities (i.e., species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk first. (In addition to reviewing candidate species, we have worked on numerous findings in response to petitions to list species, and on proposed and final determinations for rules to list species under the Act; some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way. See the discussions of Preclusion and Expeditious Progress, below, for details.)

Based on our review of the best available scientific and commercial information, with this CNOR we identify 5 new candidate species (see *New Candidates*, below), change the LPN for 28 candidates (see Listing Priority Changes in Candidates, below) and determine that listing proposals are not warranted for 4 species and thus remove them from candidate status (see *Candidate Removals*, below). Combined with the other decisions published separately from this CNOR for individual species that previously were candidates, a total of 280 species (including 139 plant and 141 animal species) are now candidates awaiting preparation of rules proposing their listing. These 280 species, along with the 2 species currently proposed for listing, are included in Table 1. (Note, regarding the two species currently proposed for listing, we proposed one since the last CNOR and we proposed the other prior to the last CNOR.)

Table 2 includes 8 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes four species for which we published separate findings that listing is not warranted, plus the four species that we have determined do not warrant preparation of a rule to propose listing and therefore have removed from candidate status in this CNOR.

New Candidates

Below we present brief summaries of five new candidates that we are recognizing in this CNOR, including one species of mammal, one amphibian, one fish, one snail, and one plant. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Internet Web site (*http://endangered.fws.gov/candidates/index.html*). For each of these five species, we find that we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but that preparation and publication of a proposal is precluded by higher-priority listing actions (i.e., these meet our definition of a candidate species). We also note below that one other species, Casey's June beetle (an insect), was identified as a candidate

earlier this year in a separate finding published in the **Federal Register**.

Mammals

New Mexico meadow jumping mouse (*Zapus hudsonius luteus*)—The following summary is based on information contained in our files. The New Mexico meadow jumping mouse (jumping mouse) is endemic to New Mexico, Arizona, and a small area of southern Colorado. The jumping mouse nests in dry soils but uses moist, streamside, dense riparian/wetland vegetation. Recent genetic studies confirm that the New Mexico meadow jumping mouse is a distinct subspecies from other *Zapus hudsonius* subspecies, confirming the currently accepted subspecies designation.

The threats that have been identified are excessive grazing pressure, water use and management, highway reconstruction, development, and recreation. Surveys conducted in 2005 and 2006 documented a drastic decline in the number of occupied localities and suitable habitat across the range of the species in New Mexico and Arizona. Of the original 98 known historical localities, there are now only 10 known extant localities in New Mexico, 1 in Arizona, and an additional 8 localities that have not been surveyed since the early to mid 1990s. Moreover, the highly fragmented nature of its distribution is also a major contributor to the vulnerability of this species and increases the likelihood of very small, isolated populations being extirpated. The paucity of secure populations, and the destruction, modification, or curtailment of its habitat, poses the most immediate threats to this species. Because the threats affect the jumping mouse in all but two of the extant localities, the threats are of a high magnitude. These threats are currently occurring and, therefore, are imminent. Thus, we assigned an LPN of 3 to this subspecies.

Amphibians

Arizona treefrog, Huachuca/Canelo Distinct Population Segment (DPS) (*Hyla wrightorum*)—The following summary is based on information in our files. The population is known from three general localities at Rancho Los Fresnos, northern Sonora, Mexico, and 13–15 verified localities and one unverified locality in the Huachuca Mountains and Canelo Hills of Arizona. The population is both discrete and significant in accordance with our February 7, 1996, DPS policy (61 FR 4721). Evidence exists that the DPS persists in an ecological setting that is unique for the taxon, that loss of the population segment would result in a significant gap in the range of the taxon, and that the population segment differs markedly from other populations of the species in its genetic characteristics. The population is discrete from the Mogollon Rim population of Arizona and New Mexico based on a physical separation of 130 miles, and from the Sierra Madre Occidental population in Sonora and Chihuahua, Mexico by 145 miles.

The most significant threats to the existence of the Huachuca/Canelo population of the Arizona treefrog are, in order of importance, habitat loss or degradation and direct mortality due to catastrophic fire; loss of populations due to drought or floods, which may be exacerbated by climatic extremes; predation by introduced species; and habitat degradation caused by livestock grazing, off-highway vehicles, and environmental contamination. The effects of these threats are exacerbated by small population sizes and low genetic diversity, as the Huachuca/Canelo Hills population has less than 20 known localities, each with observed breeding populations of 2–30 individuals. Taken together, these threats are of high magnitude, particularly in Arizona. The threats are also imminent or ongoing, particularly the threat of catastrophic wildfire; there have been several recent catastrophic fires in the Huachuca Mountains. Therefore, we have assigned an LPN of 3 to this population.

Fish

Laurel dace (*Phoxinus saylori*)—The laurel dace is a rare minnow known only from three independent systems on the Walden Ridge section of the Cumberland Plateau, including Soddy Creek, Sale Creek, and Piney River. The primary threats to the laurel dace stem from impacts to riparian and instream habitat resulting from incompatible land uses. The riparian habitats associated with some streams occupied by laurel dace have been affected by extensive timber removal activities on Walden Ridge in their vicinity; these activities often do not employ adequate streamside management zones or best management practices for road construction. Proposed projects, including installation of a water line that would cross occupied streams and construction of an impoundment on a tributary to an occupied stream, present additional direct and indirect threats to laurel dace habitat in the headwaters of Sale and Soddy creeks. We believe that the threat of habitat degradation from siltation across the range of laurel dace and the localized threats facing populations in Sale and Soddy creeks combined with vulnerable status of the populations in Soddy and Sale creeks constitute threats collectively of high magnitude, but are nonimminent. Therefore, we assigned the laurel dace an LPN of 5.

Snails

San Bernardino springsnail (*Pyrgulopsis bernardina*)—This species is endemic to one natural spring, Snail Spring, on private lands, and one artificial spring, Tule Spring, on National Wildlife Refuge lands, in the Rio Yaqui basin of Cochise County, Arizona. The species was formerly known from six to eight springs. Known threats include water diversion, spring modification, and contaminants, while suspected threats include livestock grazing and groundwater depletion. The San Bernardino National Wildlife Refuge is actively managing Tule Spring and is attempting to acquire the property containing Snail Spring. However, the Refuge cannot address the potential threat from groundwater depletion without assistance from local stakeholders. The magnitude of threats is high because the limited distribution of this narrow endemic makes any catastrophic event likely to result in extinction of the species. The threats are ongoing and therefore imminent. Thus, we have assigned an LPN of 2 for the San Bernardino springsnail.

Insects

Casey's June beetle (*Dinacoma caseyi*)—We previously announced candidate status for this species in a separate warranted but precluded 12-month petition finding published on July 5, 2007 (72 FR 36635).

Plants

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat)—The following information is based on information contained in our files. The Las Vegas buckwheat is a woody perennial shrub up to 4 feet high with a mounding shape. The flowers of this plant are numerous, small and yellow with small bract like leaves at the base of each flower. The Las Vegas buckwheat is very conspicuous when flowering in late September and early October. It is restricted to gypsum soil outcroppings in Clark and Lincoln Counties, Nevada. Only recently has the taxonomy of the subspecies been confirmed using molecular genetic analyses.

Loss of habitat from development is a significant threat with over 95 percent of the historic range and potential habitat of the subspecies lost to development. In 2005, the Las Vegas

buckwheat was known from nine locations on approximately 1,149 acres. However, since that time, approximately 289 acres were or soon will be developed, and the current distribution of the plant occupies 892 acres. In addition, OHV activity and other public land uses (casual public use, mining, and dumping) directly and indirectly threaten over half of the remaining habitat. To date, regulatory mechanisms to protect the Las Vegas buckwheat are inadequate. Its designation as a BLM special status species and limited resource and law enforcement personnel has not provided adequate protection on lands managed by the BLM. The Las Vegas buckwheat is not protected by the State of Nevada or any other regulatory mechanisms on other federal lands. We have determined that candidate status is warranted for the Las Vegas buckwheat as a result of threats to the remaining 892 acres of Las Vegas buckwheat. Conservation measures are being developed that could reduce the amount of occupied habitat at risk, but we believe it would be premature to consider these measures sufficiently complete as to remove these threats. The magnitude of threats is high since the more significant threats (development and surface mining) would result in direct mortality of the plants in over half of its' habitat. While both development and mining are very likely to occur in the future, they are not expected to happen in the immediate future, and thus, the threats are nonimminent. Accordingly, we assigned the Las Vegas buckwheat an LPN of 6.

Listing Priority Changes in Candidates

We reviewed the LPN for all candidate species and are changing the numbers for the following species. Some of the changes reflect actual changes in either the magnitude or imminence of the threats, and in one case, the LPN change reflects a change in the taxonomy of the species. For some species, our changes in the LPN reflect efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than a change in the nature of the threats.

Birds

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi stairi*)—The following summary is based on information contained in our files. The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the oceanic Pacific by six species. Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia, and *G. stairi* is endemic to Samoa, Tonga, and Fiji. All six species have some level of threatened status on the International Union for Conservation of Nature and Natural Resources (IUCN) Red List. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and one in Tonga and Fiji (*G. s. vitiensis*), but morphological differences between the two are minimal.

In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group). Threats to this subspecies have not changed over the past year. Of the primary threats to the subspecies (predation by nonnative species and natural catastrophes such as hurricanes), predation by nonnative species is thought to be occurring now, and predation likely has been occurring for several decades. This predation may be an important impediment to increasing the population. Predation by introduced species has played a significant role in reducing, limiting, and extirpating populations of island birds, especially ground-nesters, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*).

In January 2004 and February of 2005, hurricanes virtually destroyed the habitat of *G. stairi* in an area on Olosega Island where the species had been most frequently recorded. Although this species has coexisted with severe storms for millennia, this example illustrates the potential for natural disturbance to exacerbate the effect of anthropogenic disturbance on small populations. Consistent monitoring using a variety of methods over the last 5 years yielded few observations of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The past five years or so of surveys have revealed no change in the relative abundance of this taxon in American Samoa. The distribution of the friendly ground-dove is limited to steep, forested slopes with an open understory and a substrate of fine scree or exposed earth; this habitat is not common in American Samoa. We revised the LPN from a 6 to a 9 to better reflect the fact that the threats posed to the friendly ground-dove (its small population size and nonnative predators), while imminent and occurring throughout its range, are believed to be of a moderate magnitude rather than a high magnitude.

Kittlitz's Murrelet (*Brachyramphus brevirostris*)—Kittlitz's murrelet is a small diving seabird whose entire North American population, and most of the world's population, inhabits Alaskan coastal waters discontinuously from Point Lay south to northern portions of Southeast Alaska. Kittlitz's murrelets are associated with tidewater glaciers. The current population estimate for Kittlitz's murrelets in Alaska is approximately 16,700 birds, a decline of 74 to 84 percent during the past 10 to 20 years. New survey information supports and strengthens the negative population trend estimates that have been previously reported.

Threats to Kittlitz's murrelets include large-scale processes such as global climate change and marine climate regime shift. These large-scale processes may influence Kittlitz's murrelet survival and reproduction. Glacial retreat, a global phenomenon that affects many of the glaciers with which Kittlitz's murrelets are associated, is associated with changing forage fish availability and may result in increased predation from corvids (retreat of glaciers allows corvids easier access to murrelets on which they prey). Even if the causes of rapid climate warming were curbed today, feedback mechanisms would result in the continued retreat of tidewater glaciers into the foreseeable future. In addition, the declining population trend makes this species particularly susceptible to ongoing threats from other human activities, including oil spills, bycatch in commercial gillnet fisheries, and disturbance by tour boats. Kittlitz's murrelets are believed to have been seriously affected by the *Exxon Valdez* oil spill in Prince William Sound (PWS) in 1989. Estimates of direct mortality of Kittlitz's murrelets from this oil spill constituted a loss of 7 to15 percent of the PWS population. Catastrophic events such as oil spills could have a significant negative effect on the population of this already diminished species. Susceptibility to mortality as bycatch in commercial fishing could be a significant factor in their population decline; Kittlitz's murrelets are caught in gill nets in numbers disproportionate to their density. In PWS, salmon gillnet fisheries occur each summer in or near Kittlitz's murrelet habitat. Kittlitz's murrelets represented 5 percent and 30 percent of murrelet bycatch in gillnets during 1990 and 1991, respectively. Tour boat visitation to glacial fjords is a growing industry, and this activity may increasingly disrupt Kittlitz's murrelet feeding behavior; tour boats

may provide artificial perch sites for avian predators. The number of cruise ships allowed into Glacier Bay has increased 30 percent since 1985, while smaller charter boats and private boats have increased 8 percent and 15 percent, respectively. An increase in tour boat operations has been noted in Kenai Fjords National Park as well. Disturbance can disrupt feeding birds and persistent boat traffic may prevent murrelets from using high quality foraging areas.

Based on the observed population trajectory and the severity of present threats (rapid glacial retreat, acute and chronic oil spills, commercial gillnet fishing, and human disturbance from tour boats), the threats to this species are high in magnitude and imminent. We changed the LPN from a 5 to a 2 to reflect that the threats to this species are ongoing.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—The Xantus's murrelet is a small seabird in the Alcid family that occurs along the west coast of North America in the United States and Mexico. The species has a limited breeding distribution, only nesting on the Channel Islands in southern California and on islands off the west coast of Baja California, Mexico. Although data on population trends are scarce, the population is suspected to have declined greatly over the last century, mainly due to introduced predators such as rats (*Rattus* sp.) and feral cats (*Felis catus*) to nesting islands, with extirpations on three islands in Mexico. A dramatic decline (up to 70 percent) from 1977 to 1991 was detected at the largest nesting colony in southern California, possibly due to high levels of predation on eggs by the endemic deer mouse (*Peromyscus maniculatus elusus*). Identified threats include introduced predators at nesting colonies, oil spills and oil pollution, reduced prey availability, human disturbance, and artificial light pollution.

Although substantial declines in the Xantus's murrelet population likely occurred over the last century, some of the largest threats are being addressed, and, to some degree, ameliorated. Declines and extirpations at several nesting colonies were thought to have been caused by nonnative predators, which have been removed from many of the islands where they once occurred. Most notably, since 1994, Island Conservation and Ecology Group has systematically removed rats, cats, and dogs from every murrelet nesting colony in Mexico, with the exception of cats and dogs on Guadalupe Island. In 2002, rats were eradicated from Anacapa Island in southern California, which has resulted in improvements in reproductive success at that island. In southern California, there are also plans to remove rats from San Miguel Island, and to restore nesting habitat on Santa Barbara Island through the Montrose Settlements Restoration Project, which may benefit the Xantus's murrelet population at those islands.

Artificial lighting from squid fishing and other vessels, or lights on islands, remains a potential threat to the species. Bright lights make Xantus's murrelets more susceptible to predation, and they can also become disoriented and exhausted from continual attraction to bright lights. Chicks can become disoriented and separated from their parents at sea, which could result in death of the dependent chicks. High-wattage lights on commercial market squid (*Loligo opalescens*) fishing vessels used at night to attract squid to the surface of the water in the Channel Islands was the suspected cause of unusually high predation on Xantus's murrelets by western gulls and barn owls at Santa Barbara Island in 1999. To address this threat, in 2000, the California Fish and Game Commission required light shields and a limit of 30,000 watts per boat; it is unknown if this is sufficient to reduce impacts. Squid fishing has not occurred at a particularly noticeable level near any of the colonies in the Channel Islands since 1999; however, this remains a potential future threat.

A proposal to build a liquid natural gas (LNG) facility 600 meters (1,969 feet) off the Coronados Islands in Baja California, Mexico, was considered a potential major threat to the species. This island contains one of the largest nesting populations of Xantus's murrelets in the world. Potential impacts of this facility to the nesting colony included bright lights at night from the facility and visiting tanker vessels, noise from the facility or from helicopters visiting the facility, and the threat of oil spills associated with visiting tanker vessels. However, Chevron announced in March 2007 that they have abandoned plans to develop this facility and withdrew their permits. LNG facilities are proposed for construction in the Channel Islands; however, these are early in the complex and long-term planning processes; it is possible that none of these facilities will be built. In addition, none of them are directly adjacent to nesting colonies, where their impacts would be expected to be more significant.

We considered the LNG facility off the Coronados Islands to be an imminent threat of high magnitude, which resulted in the previous listing priority of a 2. While this proposed LNG facility no longer poses a threat, the remaining threats, in particular oil spills, are high in magnitude since they have the potential to cause direct mortality and reduce reproductive success throughout a majority of the species' range. The threats are nonimminent since they are not currently occurring. Therefore, we have changed the LPN from a 2 to a 5.

Reptiles

Louisiana pine snake (*Pituophis ruthveni*)—The Louisiana pine snake (LPS) historically occurred in fire-maintained longleaf-pine ecosystems of west-central Louisiana and extreme east-central Texas. Those ecosystems provided an herbaceous layer necessary to maintain the Louisiana pine snake's primary prey, the Baird's pocket gopher. Current potentially occupied habitat in Louisiana and Texas is estimated to be approximately 300,000 acres, with 70 percent occurring on public lands and 30 percent in private ownership. Results of trapping and radio-telemetry surveys suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years. To address those issues on public lands, a Candidate Conservation Agreement (CCA) was completed in 2003 to maintain and enhance potentially occupied habitat, and protect known Louisiana-pine-snake populations. Much of the public land is now being managed on longer rotations (i.e., 70+ years) where silvicultural prescriptions include smaller clearcuts, midstory removal, thinning, and prescribed fire. Private lands generally are not managed to support the longleaf-pine ecosystem and its characteristic herbaceous layer; however, several private landowners with known Louisiana-pine-snake populations continue to be involved in conservation efforts with reported conservation of more than 2,000 acres in 2006.

Within both the public and private sectors, interest in longleaf-pine restoration appears to be growing and with the appropriate emphasis could slow or reverse habitat loss trends. To address this and other issues, the LPS Conservation Group is expanding conservation efforts through the development of a Comprehensive Conservation Plan that would build upon the CCA success. Other factors affecting Louisiana pine snakes throughout its range include low fecundity, which magnifies other threats and increases the likelihood of local extinctions, and vehicular mortality, which can significantly affect Louisiana-pine-snake population and community

structure. While the magnitude of Louisiana-pine-snake habitat loss has been great in the past and the remaining habitat is degraded, habitat loss does not represent an imminent threat, because the rate of habitat loss is declining. Additionally, pro-active partnerships to address key management concerns and research needs are resulting in some additional long-leaf pine habitat that is suitable for the Louisiana pine snake or its prey species. However, while conservation actions have produced needed results, they have not yet adequately reduced threats to the species, particularly on private land. The lack of adequate habitat still poses a threat and when coupled with the very low fecundity rate and extremely low population size (based on capture rates and population estimates) make the threat high in magnitude. Overall, due to nonimminent, high-magnitude threats, we changed the LPN from an 8 to a 5 for this species.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—Currently, Columbia spotted frogs appear to be widely distributed throughout southwestern Idaho, eastern Oregon, and northeastern and central Nevada, but local populations within these general areas appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada has documented loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals. Small highly fragmented populations, characteristic of the majority of existing populations of Columbia spotted frogs in the Great Basin, are highly susceptible to extinction processes. Threats to Columbia-spotted-frog habitat, including water development, improper grazing, mining activities and non-native species, have and continue to contribute to the degradation and fragmentation of habitat. Emerging fungal diseases, such as chytridiomycosis, and the spread of parasites are contributing factors to Columbia-spotted-frog population declines throughout portions of its range. Effects of climate change such as drought and stochastic (randomly occurring) events such as fire often have detrimental effects to small isolated populations and can often exacerbate existing threats.

A 10-year Conservation Agreement and Strategy was signed in September 2003 for both the Northeast and the Toiyabe subpopulations in Nevada. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a portion of their historic range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their associated habitat to ensure their continued existence throughout their historical range. Additionally, a Candidate Conservation Agreement with Assurances was completed in 2006 for the Owyhee subpopulation at Sam Noble Springs, Idaho. Because these conservation agreements have reduced the magnitude of the imminent threats from high to moderate, we changed the LPN from a 3 to a 9 for this DPS of the Columbia spotted frog.

Black Warrior waterdog (*Necturus alabamensis*)—The Black Warrior waterdog is a salamander that inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog since little attention was given to this species between its description in 1937 and the 1980s. At that time, there were a total of only 11 known historical records from 4 Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990s to look for additional populations. Currently, the species is known from 14 sites in 5 counties.

Water-quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. The North River, Locust Fork, and Mulberry Fork, all streams that this species inhabits, are on the Environmental Protection Agency's list of impaired waters. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of square hectares (acres) of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. While the water-quality threat is pervasive and problematic, the overall magnitude of the threat is moderate as there has not been a steep rate of decline in this species population. Water quality degradation in the Black Warrior basin is ongoing; therefore, the threats are imminent. We changed the LPN from a 2 to an 8 for this species since the threats are of a moderate rather than high magnitude.

Clams

Fluted kidneyshell (*Ptychobranchus subtentum*)—The fluted kidneyshell is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations.

This species has been extirpated from numerous regional streams and is no longer found in the State of Alabama. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors that contributed to its decline. The fluted kidneyshell was historically known from at least 37 streams but is currently restricted to no more than 12 isolated populations. Current status information for most of the 12 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies, particularly in the upper Tennessee River system. Some populations in the Cumberland River system have had recent surveys as well (e.g., Wolf, Little Rivers; Little South Fork; Horse Lick, Buck Creeks). Populations in Buck Creek, Little South Fork, Horse Lick Creek, Powell River, and North Fork Holston River have clearly declined over the past two decades. Based on recent information, the overall population of the fluted kidneyshell is declining rangewide and the species remains in large numbers and is clearly viable in just the Clinch River/Copper Creek, although smaller, viable populations remain (e.g., Wolf, Little, North Fork Holston Rivers; Rock Creek). Most other populations are of questionable or limited viability, with some on the verge of extirpation (e.g., Powell River; Little South Fork; Horse Lick, Buck, Indian Creeks). Newly reintroduced populations in the Nolichucky and Duck Rivers will hopefully begin to reverse the downward population trend of this species. The threats are high in magnitude since all populations of this species are severely affected by numerous threats (impoundments, sedimentation, small population size,

isolation of populations, gravel mining, municipal pollutants, agricultural run-off, nutrient enrichment, and coal processing pollution) which results in mortality and/or reduced reproductive output. Since the threats are ongoing, they are imminent. Therefore, to help ensure consistency in the application of our listing priority process, we changed the LPN from a 5 to a 2 to reflect that the threats are imminent and high in magnitude.

Snails

Black mudalia (*Elimia melanoides*)—The black mudalia is a small species of aquatic snail found clinging to clean gravel, cobble, boulders and/or logs in flowing water on shoals and riffles. The historical habitat of the black mudalia included much of the upper Black Warrior River drainage above the Fall Line at Tuscaloosa, Alabama. The species has been extirpated from more than 80 percent of that range through the construction of dams and impoundments, sedimentation, and non-point source pollution from land surface runoff. Populations that may have avoided impoundment apparently disappeared due to historical pollution events and/or natural catastrophic events. However, after being considered extinct for two decades, the black mudalia was rediscovered in a small portion of its historical range in the Black Warrior drainage. Discovery of surviving populations in shoals of five streams in the upper Black Warrior River and high densities reported at Blackburn Fork reduce the magnitude of the threats from high to moderate. However, all known populations are currently affected by point and/or non-point source pollution; human land uses, including cattle grazing, row crops, timber, chicken farms, and home construction are currently causing sedimentation and eutrophication (reduction of oxygen in the water) of black mudalia habitats. Thus, based on ongoing threats that we now consider to be moderate in magnitude, we changed the LPN from 2 to 8 for the black mudalia.

Huachuca springsnail (*Pyrgulopsis thompsoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Huachuca springsnail inhabits 13 springs and ciénegas at elevations of 4,500 to 7,200 feet in southeastern Arizona (11 sites) and adjacent portions of Sonora, Mexico (2 sites). The springsnail is typically found in the shallower areas of springs or cienegas, often in rocky seeps at the spring source. Ongoing threats include habitat modification, wildfire, cattle grazing, and groundwater pumping. Prior communication with personnel from Fort Huachuca indicated they were in the process of evaluating the status of this species on Department of Defense lands and developing conservation strategies; this may result in a reduction or elimination of threats in the future. Because we determined that the proportion of the range subjected to various threats is smaller than we previously determined, the threats are moderate in magnitude. In addition, although there is no actual change in threats over the past year, modification of the spring habitat, wildfire, cattle grazing, and groundwater pumping are ongoing or imminent threats. Therefore, to help ensure consistency in the application of our listing priority process, we changed the LPN from a 5 to an 8 to reflect that the threats are imminent but are moderate in magnitude.

Page springsnail (*Pyrgulopsis morrisoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Page springsnail is known to exist only within a complex of springs located within an approximately 1.5-kilometer (0.93-mile) stretch along the west side of Oak Creek around the community of Page Springs, Yavapai County, Arizona. Many of the springs where the springsnail occurs have been subjected to some level of modification for domestic, agricultural, ranching, fish hatchery, and recreational activities. Arizona Game and Fish Department management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. The Arizona Game and Fish Department and the Service have made significant progress on development of a candidate conservation agreement, but the effectiveness of planned and implemented actions has not been demonstrated. Based on recent survey data, it appears that the Page springsnail is abundant within natural habitats and persists in modified habitats, albeit at reduced densities. The magnitude of threats is considered high because limited distribution of this narrow endemic makes any detrimental effects from threats likely to result in extirpation or extinction. The immediacy of the threat of groundwater withdrawal is uncertain due to conflicting information that suggests it may be either imminent or not. However, overall, the threats are imminent because the majority of them are currently occurring. Although there is no actual change in threats over the past year, modification of the spring habitat for this species is an ongoing or imminent threat. Therefore, to help ensure consistency in the application of our listing priority process, we changed the LPN from a 5 to a 2 to reflect that the threats are imminent.

Insects

Dakota skipper (*Hesperia dacotae*)—The following summary is based on information contained in our files, including information from the petition we received on May 12, 2003. The Dakota skipper is a small- to mid-sized butterfly that inhabits high-quality tallgrass and mixed grass prairie in Minnesota, North Dakota, South Dakota, and the provinces of Manitoba and Saskatchewan in Canada. The species is presumed to be extirpated from Iowa and Illinois and from many sites within occupied States.

The species is threatened by conversion of its native prairie habitat for agricultural purposes, overgrazing, invasive species, gravel mining, inbreeding, population isolation, and, in some cases, prescribed fire. Prairie succeeds to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such disturbances are not applied. We, other agencies, and private organizations (e.g., The Nature Conservancy) protect and manage some Dakota skipper sites. Although proper management is always necessary to ensure its persistence, even at protected sites, it is secure at some sites owned by these entities. The species is also secure at some sites where private landowners manage native prairie in ways that conserve Dakota skipper. Recent surveys in at least parts of the species' range have led us to revise our view of the imminence of threats to Dakota skipper. In January 2007, for example, Minnesota Department of Natural Resources proposed revising the status of Dakota skipper in the state from threatened to endangered because it ''appears to be rapidly disappearing from remnant habitat.'' In addition, approximately half of the inhabited sites are privately owned with little or no protection. Ongoing threats on these sites include invasive species, overgrazing, and herbicide applications. A few private sites are protected from conversion by easements, but these do not prevent adverse effects from overgrazing. The threats are such that the species warrants listing; the threats are moderate in magnitude and, based on

the above new information, are imminent. Therefore, we changed the listing priority number from an 11 to an 8 for the Dakota skipper to reflect the increase in immediacy of threats to remnant habitat, particularly on private lands.

Coral Pink Sand Dunes tiger beetle (*Cicindela albissima*)—The Coral Pink Sand Dunes tiger beetle occurs only at the Coral Pink Sand Dunes, approximately 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted to a small part of the dune field, situated at an elevation of about 1,820 m (6,000 ft). The beetle's habitat is being adversely affected by ongoing recreational off-road vehicle use that is destroying and degrading the beetle's habitat, especially the interdunal swales used by the larvae. The continued survival of the beetle depends on the preservation of its habitat. The two agencies that manage the dune field, the Utah Department of Parks and Recreation and the Bureau of Land Management, have restricted recreational off-road vehicle use in some areas, which reduces impacts. However, the protected areas may not be of sufficient size to enable the population to increase in size. The beetle's population is also vulnerable to overcollecting by professional and hobby tiger-beetle collectors. Because the taxon was recently elevated to a full species based on genetic research, we changed the listing priority from a 9 to an 8. The imminence and magnitude of the threats remain the same (imminent and moderate to low magnitude).

Stephan's riffle beetle (*Heterelmis stephani*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. The beetle is known from Bog Spring and Sylvester Spring in Madera Canyon, within the Coronado National Forest. These springs are typical isolated, mid-elevation, permanently saturated, spring-fed aquatic climax communities commonly referred to as ciénegas. Threats are largely from habitat modification (from recreational activities in the springs and changes in water chemistry due to catastrophic natural disasters such as fires or floods); we consider them to be of moderate to low magnitude due to the lack of focused studies to evaluate the permanence of threats or the likelihood of persistence of the species in areas that are unaffected. Furthermore, because the threats are currently occurring, they are best characterized as imminent. Due to moderate to low magnitude of imminent threats, we changed the LPN from a 5 to an 8 for Stephan's riffle beetle.

Crustaceans

Typhlatya monae (troglobitic groundwater shrimp)—*Typhlatya monae* is a subterranean small shrimp known from Puerto Rico, Barbuda, and Dominican Republic. It is classified as a troglobite, or obligatory cave organism, of which its most extraordinary feature is the reduction or loss of vision and pigmentation. It feeds on organic waste material and debris, such as bat guano.

Little is known concerning the status of *Typhlatya monae* in either Barbuda or Dominican Republic. Although in Puerto Rico this species was previously found at Mona Island, currently *Typhlatya monae* is known from only three caves within the Guánica Commonwealth Forest in the municipalities of Guánica, Yauco, and Guayanilla. However, the species may still be found in the reef deposit aquifers in Mona Island that have not yet been surveyed. In 1995, close to 2,000 individuals were estimated; over 95 percent of these were observed in only one cave. Although no systematic censuses have been conducted since 1995, we have recently documented the presence of the species in all three caves and obtained information regarding another cave in which the species may occur from Puerto Rico Commonwealth Forest personnel.

Changes in groundwater quality, collection of rare animals, predation, limited distribution of the species, limited availability of appropriate habitat (i.e., underground aquifers within cave formations), potential reduction of food sources (e.g., mortality or reduction in bat populations), and low population numbers potentially threaten populations of *Typhlatya monae.* However, because the known range of *Typhlatya monae* is within protected lands, and because we have received new information of known management activities within the Guánica Commonwealth Forest or Mona Island (activities are managed such that some of the threats to this species no longer exist; e.g. the caves are closed to visitors), we now consider the magnitude of the remaining threats (possible extraction of ground-water in Mona and vulnerability to catastrophic events) moderate to low. Therefore, we changed the LPN from a 5 to an 11 for this species.

Flowering plants

Abronia alpina (Ramshaw Meadows sand-verbena)—*Abronia alpina* is a small perennial herb, 2.5 to 15.2 centimeters (1 to 6 inches) across which forms compact mats with lavender-pink, trumpet-shaped, and generally fragment flowers. *Abronia alpina* is known from one main population center in Ramshaw Meadow on the Kern Plateau of the Sierra Nevada, California, and from one subpopulation found in adjacent Templeton Meadow. The total estimated area occupied is approximately 6 hectares (15 acres). The population fluctuates from year to year without any clear trends. Population estimates from 1985–1994 range from a low of 69,652 plants in 1986 to 132,215 plants in 1987. Surveys conducted since 1994 indicate that no significant changes have occurred in population size or location, although, the 2003 survey showed population numbers to be at the low end of the range. The population was last monitored in 2006.

The threats currently facing *Abronia alpina* include natural and human habitat alteration, hydrologic changes to the water table, and recreational use within meadow habitats. Lodgepole pine encroachment has altered the meadow and becoming established within *A. alpina* habitat. Lodgepole pine encroachment may alter soil characteristics by increasing organic matter levels, decreasing porosity, and moderating diurnal temperature fluctuations thus reducing the competitive ability of *A. alpina* to persist in an environment more hospitable to other plant species. The Ramshaw Meadow ecosystem is subject to potential alteration by lowering of the water table due to downcutting of the South Fork of the Kern River (SFKR). The SFKR flows through Ramshaw Meadow, at times coming within 15 m (50 ft) of *A. alpina* habitat, particularly in the vicinity of five subpopulations. The habitat occupied by *A. alpina* directly borders the meadow system supported by the SFKR. Drying out of the meadow system could potentially affect *A. alpina* pollinators and/or seed dispersal agents. Established hiker, packstock, and cattle trails pass through *A. alpina* subpopulations. Two main hiker trails pass through Ramshaw Meadow, but were rerouted out of *A. alpina* subpopulations where feasible, in 1988 and 1997. Remnants of cattle trails that pass through subpopulations in several places receive occasional incidental use by horses and sometimes hikers. Cattle use, however, currently, is not a threat due to the 2001 implementation of a ten-year

moratorium on the Templeton allotment which prohibits cattle from all *A. alpina* locations. In 2007, the U.S. Forest Service in cooperation with the Service drafted a Conservation Agreement for *A. alpina* that would provide protective measures via increased management of recreation in the area, habitat management, and research on *A. alpina*. Approval and finalization of this Agreement is anticipated in Fiscal Year 2008. The Service is funding studies to determine appropriate conservation measures. As a result of rerouting hiking trails, curtailing grazing, and development of a Conservation Agreement between the U.S. Forest Service and the Service the threats facing *Abronia alpina* have been reduced. Because the population is stable and the threats have been reduced, we changed the LPN for *A. alpina* from an 8 to an 11, reflecting nonimminent threats that are moderate to low in magnitude.

Bidens campylotheca ssp. *waihoiensis* (Kookoolau)—Kookoolau is an erect, perennial found in wet *Acacia-Metrosideros* (koa-ohia) forest on Maui, Hawaii. *Bidens campylotheca* ssp. *waihoiensis* is known from 1 and possibly 2 populations, 1 of 200 individuals, and the second of possibly as many as 300 individuals. It is threatened by feral pigs and cattle, which eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Conservation measures such as strategic fences and control of nonnative plants benefit the plants in Kipahulu Valley; however, the individuals in Waihoi Valley are still affected by these threats. Therefore, to reflect the fact that the threats are ongoing, we have changed the LPN for this species from a 6 to a 3.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—This pea is endemic to the lower Florida Keys, and restricted to pine rocklands, hardwood hammock edges, and roadsides and firebreaks within these ecosystems. Historically, it was known from Big Pine, No Name, Ramrod, and Cudjoe Keys (Monroe County, Florida). It presently occurs on Big Pine, plus two very small populations found on Cudjoe and lower Sugarloaf Keys in 2005. It is fairly well distributed in Big Pine Key pine rocklands, which encompass approximately 580 hectares (1,433 acres). Roughly 90 percent of its current range is within the Service's National Key Deer Refuge. In late 2005, it occurred within 37.2 percent of 541 plots sampled throughout the publicly owned pine rocklands on Big Pine Key. Frequency of occurrence was twice as great and density over 3 times greater in the less fragmented, more fire-prone northern portion of Big Pine Key than the southern part. Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland and the pea is eventually shaded out. The National Key Deer Refuge (NKDR) has a prescribed fire program, though with many constraints on implementing fire. Absence of fire is the greatest of the short-term and deterministic threats.

Hurricanes are also a threat. Hurricane Wilma (October 2005) resulted in a storm surge that covered most of Big Pine Key with sea water. In plots sampled after Wilma, frequency of occurrence decreased to less than a third and density decreased to less than half that found in plots sampled before Wilma.

The magnitude of threats to the Big Pine partridge pea is moderate. Partridge pea has a very limited distribution that is somewhat fragmented and fire limitation, salt water storm surges (direct mortality, as well as slash pine mortality, associated with hurricanes), and pollinator limitation, constitute significant threats. Additionally, threats from storm surges associated with hurricanes are exacerbated by sea level rise. Big Pine partridge pea exists as one relatively large population (possibly fragmented into a metapopulation) on Big Pine Key and two very small, isolated populations on two other keys. However, population size is on the order of several hundred thousand, and the majority occurs on the NKDR. Over the long run, partridge pea receives protective measures only on NKDR and the Terrestris Preserve. The immediacy of threats is imminent as the probability of intense hurricanes has increased in recent years, and increasingly sea levels have exacerbated the threat. Additionally, storm surges have complicated efforts to conduct prescribed fires. If the frequency of prescribed fire does not increase, the imminence of threats due to fire suppression will continue to increase. Because the threats are moderate rather than high in magnitude due to some protection from threats provided by the NKDR and Terrestris Preserve, we changed the LPN from a 6 to a 9 for the Big Pine partridge pea.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—New survey results were obtained in March 2006. Wedge spurge is a small, prostrate herb. It has always been restricted to Big Pine Key in Monroe County, Florida. Most of the range falls within the National Key Deer Refuge. It is restricted to pinelands on limestone rock (pine rockland), at sites with exposed rock or gravel, low understory cover, and low hardwood density. Pine rocklands encompass approximately 580 hectares (1,433 acres) on Big Pine Key. It is not widely dispersed within the limited range. In late 2005, it occurred within 7.4 percent of 541 plots sampled throughout the publicly owned pine rocklands on Big Pine Key. Hurricane Wilma (October 2005) resulted in a storm surge that covered most of Big Pine Key with sea-water. Before and after Wilma, it occurred in 9.3 of 332 sample plots and 4.3 percent of 209 sample plots, respectively, and density decreased significantly within plots. Occupied plots had become restricted to the higher, middle portion of Big Pine Key. In the absence of fire, shrubs and trees encroach on pine rockland and spurge is eventually shaded out.

The magnitude of threats to the wedge spurge is moderate. Wedge spurge has a narrow distribution composed of few occurrences, and threats result from lack of fire, hurricanes, sea level rise, and invasive exotic plants. Additionally, threats from storm surges associated with hurricanes are exacerbated by sea-level rise. Wedge spurge exists essentially as a single (fragmented) population on Big Pine Key, which over the long run is protected only on NKDR and the Terrestris Preserve. However, population size is on the order of several hundred thousand, and the majority occurs on the NKDR. The National Key Deer Refuge has a prescribed fire program, though with many constraints on implementing fire.

The threats to the wedge spurge are imminent. The best available information indicates that this plant is intrinsically vulnerable to extinction because it is a narrow endemic. Moreover, the threats of hurricanes and shading due to lack of fire are ongoing. However, because the threats are moderate rather than high in magnitude due to some protection from threats provided by the NKDR and Terrestris Preserve, we changed the LPN from a 6 to a 9 for the wedge spurge.

Cordia rupicola (no common name)—*Cordia rupicola,* a small shrub, has been described from southwestern Puerto Rico (Peñuelas and Guánica), Vieques Island, and Anegada Island (British Virgin Islands). *Cordia rupicola* is restricted to subtropical dry forest life zone overlying a limestone substrate. At present time, less than 20 individuals of *C. rupicola* are currently known from four sites in Puerto Rico; only a few individuals are located in protected lands managed for conservation by the

Puerto Rico Department of Natural and Environmental Resources or the Service. The area that contains 83 percent of the known population is located in a privately-owned property and is threatened by habitat destruction or modification. While the population on Anegada Island is currently stable, this population is threatened by potential residential and commercial development. Both populations are also vulnerable to natural (e.g., hurricanes) or manmade (e.g., human-induced fires) threats. All sites are located in a xeric environment vulnerable to human-induced fires which could destroy entire populations. For these reasons, the magnitude of the current threats is high. While hurricanes and fire do occur, the rate of occurrence is such that they do not pose an imminent threat. The threats this species faces are ones that will arise in the future if conservation measures are not implemented and long-term impacts are not averted. For these reasons, the threats to the species as a whole are nonimminent, and therefore, we changed the LPN from a 2 to a 5 for this species.

Dalea carthagenensis floridana (Florida prairie-clover)—*Dalea carthagenensis floridana* occurs in Big Cypress National Preserve in Monroe and Collier Counties, Florida. It is also known from small populations in Miami-Dade County. There are a total of nine extant occurrences, most of which are on conservation land. Existing occurrences are extremely small and may not be viable, especially those in Miami-Dade County. Remaining habitats are fragmented. This plant is threatened by habitat loss and habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Damage to plants by off-road vehicles is a serious threat within the Big Cypress National Preserve; the threat from illegal mountain biking at the R. Hardy Matheson Preserve has been reduced. This species is being parasitized by the introduced insect lobate lac scale at some localities (e.g., R. Hardy Matheson Preserve), but we do not know the extent of this threat. This plant is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. After a thorough review of the species status and threats, the magnitude of threats is high and threats are imminent because of the limited number of occurrences and the small number of individual plants at each occurrence. In addition, even though many sites are on conservation lands, these plants still face significant ongoing threats. Therefore, we have changed the LPN from 9 to 3 for this subspecies.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus)—The following summary is based on information contained in our files and the petition we received on October 30, 2002. The Acuna cactus is known from six sites on well-drained gravel ridges and knolls on granite soils in Sonoran Desert scrub association at 1300–2000 feet elevation.

Habitat destruction has been a threat in the past and is a potential future threat to this species. New roads and illegal activities have not yet directly affected the cactus populations at Organ Pipe Cactus National Monument, but areas in close proximity to these known populations have been altered. Cactus populations located in the Florence area have not been monitored, and these populations may be in danger of habitat loss due to recent urban growth in the area. Urban development near Ajo, Arizona, as well as that near Sonoyta, Mexico, is a significant threat to the Acuna cactus. Populations of the Acuna cactus within the Organ Pipe Cactus National Monument have shown a 50-percent mortality rate in recent years. The reason(s) for the mortality are not known, but continuing drought conditions are thought to play a role. The Arizona Plant Law and the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide some protection for the Acuna cactus. However, illegal collection is a primary threat to this cactus variety and has been documented on the Organ Pipe Cactus National Monument in the past. The threats continue to be of a high magnitude. The threats are now imminent, as evidenced by the continued decline of the species, most likely from effects from the on-going drought. Conditions in 2006 worsened, and the drought is prevalent throughout the range of this variety. For this reason, we believe that the main threat, drought, is on-going and is a significant threat to the long-term viability of this variety. Thus, we changed the LPN from a 6 to a 3 for this cactus variety.

Geranium hanaense (Nohoanu)—This species is a decumbent shrub found in bogs on Maui, Hawaii. This species is known from two adjacent bogs totaling 300 to 500 individuals. *Geranium hanaense* is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. However, feral pigs have been fenced out of and removed from both bogs in which this species currently occurs, and a control program has reduced nonnative plants in all fenced areas. Given that the threats to the only known populations of this species are currently being managed and the populations are routinely monitored, this changes the overall magnitude of these threats to moderate. The threats are imminent, however, because the fences must be routinely monitored and nonnative plants must continually be controlled. Therefore, we have changed the LPN for this species from a 5 to an 8.

Helianthus verticillatus (whorled sunflower)—The following information is based on information contained in our files. The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only five populations are known for this species from seven sites. There are two populations documented for Cherokee County, Alabama; one in Floyd County, Georgia; and one each in Madison and McNairy Counties, Tennessee. This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes; timber harvest remains a potential threat for the Alabama populations. We changed the priority number from an 11 to a 5 to reflect a high magnitude of threat based on current information. The 11 was assigned previously because the magnitude of threat was then moderate since information at that time indicated that the Georgia site, which is permanently protected, was the largest population, had thousands of plants, and was thriving. New information indicates that this Georgia site actually only harbors 15 to 20 individuals and that plants at this site appear to have low fitness as indicated by their shorter stature and the absence of flowering in this population. The remaining four populations are all on private land with no protection at this time. However, the threats are still nonimminent though since efforts are actively underway to obtain protection for these sites and habitat conversion and timber harvesting are not currently affecting the species.

Phacelia stellaris (Brand's phacelia)—*Phacelia stellaris* is an annual plant in the Hydrophyllaceae (water-leaf family). Plants are spreading to erect, 6 to 25 cm (2.5 to 10 in) tall. *Phacelia stellaris* was historically found in Los Angeles, Riverside, and San Diego Counties and in coastal northern Baja California, Mexico. Approximately 50 percent of the linear extent of the coastal occurrences of this species has been lost, presumably to urbanization and habitat degradation. The last documentation of the range of the species in Mexico was in 1975. In the United States, four of the five known extant occurrences are from coastal San Diego County, California, in the following areas: Marine Corps Base Camp Pendleton, Silver Strand in the City of San Diego, within a few hundred yards of the Mexican border at Lichty Mesa, and the recently rediscovered population at Coronado Island on Naval Air Station North Island. The only other known extant occurrence is in western Riverside County, southwest of Fairmont Park. Potential threats to the U.S. occurrences include: The anticipated Border Fence project, development or agricultural activities, trampling from humans and equestrian traffic, disturbances from management actions, and invasive nonnative plants. Three of the five populations are very small (tens to low-hundreds) and small populations are considered subject to random events and genetic constraints. This species faces high magnitude threats, but the efforts of land managers and other regulatory mechanisms have resulted in the threats being nonimminent. Therefore, because overall, the threats are nonimminent, we changed the LPN for this species from a 2 to a 5.

Phyllostegia floribunda (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an erect subshrub found in mesic to wet forest on the island of Hawaii, Hawaii. This species is known from 10 locations totaling fewer than 270 naturally occurring and outplanted individuals on State, private, and Federal lands. *Phyllostegia floribunda* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The Park Service, The Nature Conservancy of Hawaii, and the State have outplanted over 170 individuals at Olaa Forest Reserve, Kona Hema, and Waiakea Forest Reserve (greater than 50, 20 individuals, and 100 individuals, respectively). Fences protect approximately seven populations on private, State, and Park Service lands. Nonnative plants have been reduced in these fenced areas. However, no conservation efforts have been implemented for the unfenced populations. Because these threats are of imminent, but only moderate magnitude for the majority of the populations, we changed the LPN from a 2 to an 8.

Sideroxylon reclinatum ssp. *austrofloridense* (Everglades bully)—Everglades bully occurs on pinelands, pineland/prairie ecotones, and prairies in Everglades National Park and private lands in Miami-Dade County, and Big Cypress National Preserve in Monroe County, Florida. Pine rocklands in Miami-Dade County have largely been destroyed by residential, commercial, and urban development and agriculture. Most remaining suitable habitat for this plant has been negatively altered by human activity. While privately owned pine rocklands are at risk from development, habitat for this plant is, for the most part, protected. The species is threatened by habitat loss and habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and exotic plants. Hydrology has been altered within Long Pine Key at Everglades National Park due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades could negatively affect the pinelands of Long Pine Key, where the largest population occurs. At this time, it is not known whether Everglades restoration will have a positive or negative effect. This species may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Sea level rise will likely be a factor over the long term. After a thorough review of the species status and threats, the magnitude of threats continues to remain moderate to low, particularly since additional populations have recently been documented at Big Cypress National Preserve and on small pinelands in Miami-Dade County. We anticipate that additional occurrences will be found at Everglades National Park. Overall, the threats are nonimminent, particularly since most of the habitat is protected and managed to benefit this species. For the largest population in Everglades National Park, efforts are under way to ameliorate the threats from exotic plants. Therefore, we changed the LPN from a 9 to a 12 for this subspecies.

Solanum nelsonii (Popolo)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Solanum nelsonii is a sprawling or trailing shrub found in coral rubble or sand in coastal sites. This species is known from populations in the northwestern Hawaiian Islands: Midway (approximately 260 plants), Laysan (approximately 490 plants), Pearl and Hermes (unknown number of individuals), Nihoa (8,000 to 15,000 adult plants); and Molokai (approximately 300 plants), in the main Hawaiian Islands. *Solanum nelsonii* is moderately threatened by ungulates (on Molokai) that degrade and destroy habitat, and that may eat it, and by nonnative plants that outcompete and displace it (Molokai and the northwestern Hawaiian Islands). Ungulate exclusion fences, routine fence monitoring and maintenance, and weed control protect the population of S. nelsonii on Molokai. Limited weed control is conducted in the northwestern Hawaiian Islands. In addition, *S. nelsonii* is likely threatened by being eaten by a nonnative grasshopper, *Schistocerca nitens,* in the northwestern Hawaiian Islands. Currently no control measures are in place for this grasshopper. Because these threats are of moderate magnitude and are imminent for the majority of the populations, we changed the LPN from a 2 to an 8.

Symphyotrichum georgianum (Georgia aster)—Georgia aster is a relict species of post oak savanna/prairie communities that existed in the southeast prior to widespread fire suppression and extirpation of large native grazing animals. Most remaining populations survive adjacent to roads, utility rights of way and other openings where current land management mimics natural disturbance regimes. Georgia aster currently is known to occur in the States of Alabama, Georgia, North Carolina, and South Carolina. The species appears to have been extirpated from Florida.

Most of the known populations are small (fewer than 50 stems), and because the species' main mode of reproduction is vegetative, each isolated population may represent only a few genotypes. A key factor impacting the Georgia aster is the present and threatened destruction, modification, and curtailment of its habitat and range as a result of subdivision development, highway expansion/improvement activities, herbicide application, and succession by wood plants due to fire suppression. The inadequacy of existing regulatory mechanisms is another factor posing a threat to the species, as approximately 95 percent of the known

surviving populations are estimated to occur on private lands and no state or local laws protect the plants or their habitat. The species is not afforded specific protection on federal lands, where we estimate 5 percent of the populations occur. A third factor impacting the species is direct damage from mowing or herbicide applications conducted as part of maintenance along highways and rights of way; these activities can kill plants, and possibly extirpate populations in local areas.

In previous years, we assigned an LPN of 5 to the Georgia aster, corresponding to a magnitude rating of high and an immediacy rating of nonimminent. However, based on the Service's efforts to achieve greater consistency in the interpretation of magnitude and immediacy, as well as new information regarding the abundance of the species, we are now revising the LPN. With regard to immediacy, the threats described above are currently occurring and are, therefore, imminent. We expect the threats are operating throughout the range of the species. However, the species is still relatively widely distributed, with occurrences in 3 counties in Alabama, 9 counties in North Carolina, 11 counties in South Carolina, and possibly as many as 18 counties in Georgia. Also, recent information indicates the species is more abundant than when we initially identified it as a candidate for listing, with possibly as many as 120 populations, in comparison to approximately 60 when it became a candidate in 1999. Taking into account its distribution and the new information indicating the species is more abundant than previously realized, we have revised the magnitude of threats from ''high'' to ''moderate.'' Therefore, we have changed the LPN from a 5 to an 8.

Ferns and Allies

Christella boydiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a small-to-medium-sized fern found in mesic to wet forest along streambanks on Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii; however, the species has been extirpated from that island. Currently, this species is known from 4 populations totaling fewer than 200 individuals. Two populations, numbering 162 and 2 individuals respectively, are found within Haleakala National Park on the island of Maui, where they are fenced and managed. The other two populations, numbering 5 and 9 individuals respectively, are located on State and private lands in the Koolau Mountains of Oahu. This species is threatened by feral pigs that degrade and/or destroy habitat and that may eat this plant, nonnative plants that compete for light and nutrients, and man-made stream diversion. Feral pigs have been fenced out of the two populations on Maui, and nonnative plants have been reduced in the fenced areas. No conservation efforts are under way to alleviate threats to the two populations on Oahu. The two managed populations constitute 92 percent of the currently known populations. Therefore, the magnitude of the threats acting upon the currently extant populations is considered moderate, while the threats from feral pig activities and nonnative plants are ongoing, and therefore imminent. Thus, we changed the LPN from a 2 to an 8 for this species.

Taxonomic Changes in Candidates

Mammals

Mazama pocket gopher (*Thomomys mazama* ssp. c*ouchi, douglasii, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli, yelmensis*)—Based on mitochondrial DNA analysis, we are including an additional subspecies of Mazama pocket gopher (Brush Prairie pocket gopher, *T. Mazama douglasii)*, in our candidate list. See summary below under ''*Findings for Petitioned Candidate Species*'' for additional information.

Insects

Coral Pink Sand Dunes tiger beetle (Cicindela albissima)—Based on recently genetic research, this taxon was recently elevated to a full species. See summary above under ''*Summary of Listing Priority Changes in Candidates*'' for additional information.

Candidate Removals

As summarized below, we have evaluated the threats to the following four species and considered factors that, individually and in combination, presently or potentially could pose a risk to these species and their habitat. After a review of the best available scientific and commercial data, we conclude that listing these four species under the Endangered Species Act is not warranted because the species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, for each of these species we find that proposing a rule to list them is not warranted, and we no longer consider them to be candidate species for listing. We will continue to monitor the status of these species, and to accept additional information and comments concerning this finding. We will reconsider this determination in the event that new information indicates that the threats to these species are of a considerably greater magnitude or imminence than identified through assessments of information in our files, as summarized here. The summary below also notes two other species for which we published separate findings removing them from candidate status since the most recent CNOR.

Fish

Fluvial arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)—see **Federal Register** notice published on April 24, 2007 (72 FR 20305).

Insects

Beaver Cave beetle (*Pseudanophthalmus major*)—see **Federal Register** notice published on October 11, 2006 (71 FR 59711).

Surprising cave beetle (*Pseudanophthalmus inexpectatus Barr*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The surprising cave beetle is a small (4 mm), eyeless, reddish-brown, troglobitic insect that belongs to the ground beetle family Carabidae. The species is predatory, feeding upon other small cave invertebrates such as spiders, mites, and millipedes.

We made the surprising cave beetle a candidate for listing on October 30, 2001. The species was originally described from two caves in Mammoth Cave National Park (MCNP), Kentucky—the historic entrance of Mammoth Cave (or Crevice Pit) and White Cave. Subsequent to this discovery, it was later found in Great Onyx Cave in MCNP. Since 2001, when we identified it as a candidate, we have found that the surprising cave beetle is more common and widespread than previously believed. In 2002, the species was discovered in a previously unnamed cave (now called Surprising Cave) within MCNP. This discovery was notable because it represented a northern range extension for the species and was made in a cave system that many speculate is completely separate from those located south of the Green River.

In 2006, the species was discovered in a fifth cave (Saucer Cave) within MCNP. Thus, we now know that the distribution of the species includes at least five areas within MCNP. In addition, over the past 6 years a total of

10 individuals have been observed during routine surveys for other cave biota. Because the surprising cave beetle is small, cryptic, and difficult to locate within the cave environment, the collection of 10 individuals is a significant accomplishment for a *Pseudanophthalmus* survey, especially when the surprising cave beetle was not the target organism. Many of the caves in MCNP have not been adequately surveyed for *Pseudanophthalmus* or other small cave organisms, and based on the information now available, we believe the species is more common within these habitats than first believed.

The most significant potential threats to the species (trampling by humans, habitat disturbance, and disruption of energy inputs) are abated by its location within a national park (MCNP) and MCNP's strict control over the majority of the cave system and its habitats. Tours are offered in only two of the five caves where the species is known to occur, and tours take place in areas away from known beetle habitats. Habitat disturbance, vandalism, and entrance manipulation are unlikely to occur because the caves are in isolated, protected locations within a national park. Other potential threats, such as contamination of cave systems through polluted stormwater runoff and toxic chemical spills, are not considered to be significant because of their low probability of occurrence. In addition, we entered into a 15-year Candidate Conservation Agreement (CCA) for the surprising cave beetle in 2001 with the National Park Service (NPS) at MCNP. The purpose of this CCA is for the Service and NPS to jointly implement conservation measures for the surprising cave beetle in MCNP. Management activities undertaken by MCNP under the CCA increase protection and enhance the status of this species. The Agreement was updated in 2004, and the NPS continues their efforts under this agreement.

Based on findings in our updated assessment of the surprising cave beetle, we conclude that listing this species under the Endangered Species Act is not warranted within the foreseeable future throughout all or a significant portion of its range. There is no portion of its range for which we have information that the species might be locally threatened. The current level of threats will not result in the species becoming in danger of extinction nor do we foresee threats increasing at any time in the future. The species no longer meets our definition of a candidate, and we have removed it from candidate status.

Warm spring zaitzevian riffle beetle (*Zaitzevia thermae*)—The warm spring zaitzevian riffle beetle is an aquatic flightless beetle endemic to Bridger Creek Warm Springs near Bozeman, Montana. This spring is entirely on land managed by the Service's Fish Technology Center (FTC) and is a water source for the FTC. The warm spring zaitzevian riffle beetle is not known to drift within a water system with any probability of survival and requires clean water and small rock substrate absent siltation. The beetles feed on small pieces of algae and diatoms that they scrape from the submerged rocks. The warm spring zaitzevian riffle beetle requires warm and flowing surface water with surface temperatures of 16 to 29°C (60 to 84°F). Water temperature is likely the most influential factor in the species' biology. The distribution of the species is described as colonies found within three main areas along 50 linear meters (m) (164 linear feet (ft)) of Bridger Creek where a warm spring emerges at or near creek water surface level. A large cement water collection box built around the spring in the early 1900s provides protection to the riffle beetle's spring habitat and it is within this sheltered area where the majority of the warm spring zaitzevian riffle beetle population occurs.

A 1994 management plan prepared by the Service for the beetle guided successful implementation of actions to ensure that warm water flow out of the collection box to external seep habitat was not hindered by debris, make necessary repairs, maintain barricades and signs to prevent public disturbance of the beetle's habitat, and monitor water flow and the species to determine if conservation measures should be modified. The 1994 management plan also provided for removal of silt from the bottom of the collection box, if necessary; however, there has been no need to implement silt removal. In 2001, the FTC acquired 40 acres of land adjacent to and uphill from the spring, which provided additional protection of the spring by preventing development and adverse land use on these lands. The area around the spring continues to be protected by a chain-link fence and signs erected by the FTC, limiting foot traffic in the area (the area historically was used for swimming) as required in the 1994 management plan. In 2002, with approval of entomologists from Montana State University (MSU) per the 1994 management plan, the height of the collection box roof was raised an additional 0.6 m (2 ft) to decrease the chance of Bridger Creek runoff or flood water contaminating water in the collection box. The purpose of this project was to protect the FTC's water source from potential pathogens, silt, aquatic nuisance species, decreased water temperature, and harmful chemicals, which in turn protects the habitat of the beetle. The project also included alteration to the roof of the water collection box to improve light penetration into the box for the beetles. The actions implemented through this project continue to effectively provide beetle habitat. In July 2006, a new Conservation Agreement and Strategy (CAS) was finalized. The goal of the CAS is to ensure long-term, effective conservation of the warm spring zaitzevian riffle beetle and Brown's riffle beetle (*Microcylloepus browni*), another endemic beetle found in warm water seeps downstream of warm spring zaitzevian riffle beetle habitat. The CAS formalizes the ongoing cooperative effort of the signatories in conserving the warm spring zaitzevian riffle beetle in its native habitat. The signatories to the CAS are: the Service; Montana Fish, Wildlife and Parks; and MSU. Activities under the CAS are overseen by a workgroup of biologists representing the signatories. Under the 2006 CAS, water monitoring now is conducted by the Service according to the more detailed protocols in the CAS monitoring plan, which further ensures that necessary information will be acquired in order to respond appropriately in the event that water pollution or contamination is detected. Most of the conservation efforts described in the CAS are continuations of practices that were already being implemented, and are effective in addressing the potential threats to the warm spring zaitzevian riffle beetle. These efforts include continuing to remove debris from the cement box, maintenance of signage and delivery of educational materials, and review of any proposed changes in land and stream uses that might impact the species and its habitat.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the warm spring zaitzevian riffle beetle (habitat development or other alterations that would alter water flow, temperature or chemistry, and stochastic events such as flooding) and considered factors that, individually and in combination, could pose a risk to the species and its habitat. This species occurs in a single spring, and the area it occupies encompasses approximately 35 m^2 (377 ft^2), plus small adjacent seeps upstream and downstream where the species occurs in small numbers (approximately 1 m^2 (11 ft^2) of habitat). All occupied habitat is significant to the species due to its

relatively small area and single location, therefore separate analysis of portions of the range is not applicable to this species. The foreseeable future for this species is linked to threats (habitat sustainability) more strongly than to life cycle timeframes; because the known population is carefully managed through the 2006 Conservation Agreement and Strategy, threats are not expected to increase within the foreseeable future. The FTC has committed to fund the CAS for 5 years, and we have no reason to believe that the FTC will discontinue funding and implementing the CAS into the future. We conclude that listing this species under the Act is not warranted. Because the current population is stable and threats have been addressed, it is not likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. This species no longer meets our definition of a candidate and is removed from candidate status.

Flowering Plants

Erigeron basalticus (Basalt daisy)—*Erigeron basalticus* is a perennial, herbaceous plant with a taproot and one to several sprawling stems 10 to 15 centimeters (cm) (4 to 6 inches (in)) long. *Erigeron basalticus* grows in crevices in basalt cliffs on canyon walls, at elevations from 380 to 460 m (1,250 to 1,500 ft), along the Yakima River Canyon and Selah Creek, a tributary of the Yakima River, Washington. It is found in microsites that are largely devoid of other vegetation and undergoing primary succession. To date, threats from highway maintenance, rock quarrying, collection, location on private lands, herbicide spray drift, recreational rock climbing, or landslides previously described for this species have not been observed to affect numbers, distribution, or recruitment of *Erigeron basalticus* since the time it was initially surveyed. Overall population numbers have fluctuated within a range, but appear to be relatively stable since 1988. Monitoring of the majority of the known sites in June 2007, by the University of Washington College of Forest Resources, Botanic Gardens Rare Plant Care and Conservation Branch, provided additional data to support the removal of this species from candidacy. In addition to robust numbers counted in nearly all populations, the survey group discovered two previously unknown locations for *E. basalticus* so the species is more abundant than previously realized.

The Bureau of Land Management has no plans to change management on the Areas of Critical Environmental Concern where several subpopulations of *E. basalticus* occur. Activities previously thought to pose potential threats to the species have not materialized and we have no basis for concluding that they would affect the species in the future. Continued surveys indicate subpopulations have been fluctuating in size within a reasonable range over time, and we have no reason to believe that this will change in the future. Further, there is no portion of its range for which we have information that the species might be locally threatened. Based on our updated assessment, we conclude that *E. basalticus* is not likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Therefore we find that listing *E. basalticus* is not warranted and we remove this species from candidate status.

Ferns and Allies

Botrychium lineare (slender moonwort)—A member of the adder's-tongue family (Ophioglossaceae), *Botrychium lineare* is a small perennial fern. The species is known from 22 sites spread across 8 States (Alaska, Colorado, Minnesota, Montana, Oregon, South Dakota, Washington, and Wyoming) and two Canadian Provinces (Alberta and Yukon Territory), with a total geographic range of more than 107,000 square miles. Over 3,300 miles (5,300 kilometers) separate *B. lineare* sites in Alaska and Minnesota. Seventeen of the 20 known sites in the United States occur on Federal lands, with 3 sites found on private lands.

Review of recent information indicates there is an increase in the number of known locations of *Botrychium lineare* and the geographic range is much larger than we previously understood. Based on increased survey efforts, at least 12 new population sites have been found in 6 states, including 4 new States, and two Canadian provinces since 2003. Population sites are generally small in area and number of individuals, making the species difficult to locate and survey for, or detect in plant surveys. Because *Botrychium* species have few diagnostic features (they are small and have only one leaf), *B. lineare* can be difficult to distinguish from other closely related moonworts. For example, one former *B. lineare* population site in Idaho and two in Nevada described in the May 11, 2005, Candidate Notice of Review (70 FR 24870) are now considered something other than *B. lineare* based on genetic analysis. Some researchers consider *B. lineare* a habitat generalist that may be an opportunistic colonizer since it is found in a variety of natural sites, and several extant population sites are found in man-made disturbed sites (i.e., roadsides and roadbeds, mine tailings, and along stream banks). Because they are found in a variety of habitat types, describing suitable or a specific habitat type is problematic. We believe that the species is more widespread than currently reported. The disjunct nature of known population sites over a wide geographic range of more than 107,000 square miles suggests that additional undetected *B. lineare* populations will likely be discovered both within and outside of the largely unsurveyed geographic range of the species in the United States and Canada.

Much of the information provided to us regarding potential threats to *Botrychium lineare* is general in nature or there is uncertainty and very little documentation on how potential threats are affecting existing, disjunct populations, individual plants or the various natural and disturbed habitats of the species. Not all known population sites are exposed to potential threats. Where Federal land managers have recognized that threats could be affecting *B. lineare* populations, various conservation measures are being implemented. In total, potential threats are being addressed at 8 of the 20 *B. lineare* population sites in the United States (2 Canadian population sites not included). Invasive, nonnative species are reported to occur within 4 populations and adjacent to 10 populations. Conservation measures to reduce the occurrence of invasive species are under way at seven sites in Colorado, Montana, and Oregon. Monitoring to detect presence of additional invasive species is currently conducted at two additional sites in Oregon. Thirteen populations occur adjacent to or near roads; avoidance and minimization measures are in place at four sites in Colorado and one site in South Dakota to reduce the impact of road-related activities. Livestock impacts have been precluded at one site in Washington through an exclosure.

Based on our updated assessment, we have determined that *Botrychium lineare* is not likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. We have no information that indicates that any of the known *B. lineare* populations constitute a significant portion of the range of the species or that there is any portion of its range where the species might be locally threatened. *Botrychium lineare's* known geographic range is much larger than previously understood and it is likely that additional *B. lineare*

populations will be discovered both within and outside of the largely unsurveyed geographic range of the species in the United States and Canada. There is also insufficient information to adequately describe suitable habitat for the species, or to fully understand *B. lineare's* biological vulnerability to potential threat factors. Therefore, we find that listing is not warranted and we remove this species from candidate status.

Petition Findings

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on his own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding''):

1. The petitioned action is not warranted;

2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) govern further procedures regardless of whether we issued the proposal in response to a petition); or

3. The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. (We refer to this as a ''warranted-but-precluded finding.'')

Section 4(b)(3)(C) of the Act requires that when we make a warranted but precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we are required to publish new 12-month findings on these ''resubmitted'' petitions on an annual basis.

On December 5, 1996, we made a final decision to redefine ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 6, 1996). Therefore, the standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

This publication also provides notice of substantial 90-day findings and the warranted-but-precluded 12-month findings pursuant to section 4(b)(3) for candidate species listed on Table 1 that we identified on our own initiative, and that subsequently have been the subject of a petition to list. Even though all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings, we reviewed the status of the newly petitioned candidate species and through this CNOR are publishing specific section 4(b)(3) findings (i.e., substantial 90-day and warranted but precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition.

Pursuant to section 4(b)(3)(C)(i) of the Act, once a petition is filed regarding a candidate species, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the Act at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make this annual finding for petitioned candidate species through the CNOR.

Section 4(b)(3)(C)(iii) of the Act requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, whether it was identified through our own initiative or through the petition process, we will make prompt use of the emergency listing authority under section 4(b)(7). We have been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms also constitute the Service's annual finding on the status of petitioned species pursuant to section 4(b)(3)(C)(i).

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534; October 25, 1999) did not demonstrate that we fulfilled the second component of the warranted-but-precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog (*Center for Biological Diversity* v. *Norton,* 254 F.3d 833 (9th Cir. 2001)). The court found that the one-line designation in the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy section 4(b)(3)(B)(iii)'s requirement that the Service publish a finding ''together with a description and evaluation of the reasons and data on which the finding is based.'' The court suggested that this one-line statement of candidate status also precluded meaningful judicial review.

On June 21, 2004, the United States District Court for Oregon agreed that we can use the CNOR as a vehicle for making petition findings and that our reasoning for why listing is precluded does not need to be based on an assessment at a regional level (as opposed to a national level) (*Center for Biological Diversity* v. *Norton* Civ. No. 03–1111–AA (D. Or.)). However, this court found that our discussion on why listing the candidate species were precluded by other actions lacked specificity; in the list of species that were the subject of listing actions that precluded us from proposing to list candidate species, we did not state the specific action at issue for each species in the list and we did not indicate which actions were court-ordered.

On June 22, 2004, in a similar case, the United States District Court for the Eastern District of California also concluded that our determination of preclusion may appropriately be based on a national analysis (*Center for Biological Diversity* v. *Norton* No. CV S–03–1758 GEB/DAD (E.D. Cal.)). This court also found that the Act's

imperative that listing decisions be based solely on science applies only to the determination about whether listing is warranted, not the question of when listing is precluded.

On March 24, 2005, the United States District Court for the District of Columbia held that we may not consider critical habitat activities in justifying our inability to list candidate species, requiring that we justify both our preclusion findings and our demonstration of expeditious progress by reference to listing proceedings for unlisted species (*California Native Plant Society* v. *Norton*, Civ. No. 03–1540 (JR) (D.D.C.)). The court further found that we must adequately itemize priority listings, explain why certain species are of high priority, and explain why actions on these high-priority species preclude listing species of lower priority. The court approved our reliance on national rather than regional priorities and workload in establishing preclusion and approved our basic explanation that listing candidate species may be precluded by statutorily mandated deadlines, court-ordered actions, higher-priority listing activities, and a limited budget.

We drafted previous CNORs to address the concerns of these courts and continue to incorporate those changes that addressed the courts' concerns in this CNOR. We include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species and we explain the priority system and why the work we have accomplished does preclude action on listing candidate species.

Pursuant to section 4(b)(3)(C)(ii) and the Administrative Procedure Act (5 U.S.C. 551 et seq.), any party with standing may challenge the merits of any not-warranted or warranted-but-precluded petition finding incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue (particularly the supporting species assessment form), will provide an adequate basis for a court to review the petition finding.

Nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a resubmitted 12-month petition finding for each petitioned candidate within 1 year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, any party with standing may seek judicial review.

In this CNOR, we continue to address the concerns of the courts by including more specific information in our discussion on preclusion (see below). In preparing this CNOR, we reviewed the current status of and threats to the 203 candidates and 5 listed species for which we have received a petition and for which we have found listing or reclassification from threatened to endangered to be warranted but precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher-priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of and threats to petitioned candidate or listed species for which we published findings, pursuant to section 4(b)(3)(B), in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species.

We have identified the candidate species for which we received petitions by the code ''C*'' in the category column on the left side of Table 1. As discussed above, the immediate publication of proposed rules to list these species was precluded by our work on higher-priority listing actions, listed below, during the period from September 12, 2006, through September 30, 2007. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available. This review will determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the Act.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why these particular candidates warrant listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: *http://endangered.fws.gov/*. As described above, under section 4 of the Act we may identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add a species to the lists of species determined to be threatened species or endangered species under the Act. Below we describe the actions that continue to preclude the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action, and we describe the expeditious progress we are making to add qualified species to the lists of endangered or threatened species.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. (As described above in the Summary, the listing priority of a species is represented by the LPN we assign to it.) Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; resubmitted petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into

final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (e.g., Recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until last year (FY 2006), the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Pub. L. 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.'' Taking into account the information presented above, in FY 2007, the outer parameter within which ''expeditious progress'' must be measured is that amount of progress that could be achieved by spending $5,193,000, which was the amount available in the Listing Program appropriation that was not within the critical habitat subcap.

Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, Federal district courts have mandated that we must complete certain listing activities with respect to specified species and have established the schedules by which we must complete those activities. The species involved in these court-mandated listing activities are not always those that we have identified as being most in need of listing. As described below, a majority of the $5,193,000 appropriation available in FY 2007 for new listings of species is being consumed by court-mandated listing activities; by ordering or sanctioning these actions, the courts essentially determined that these were the highest priority actions to be undertaken with available funding. Copies of the court orders and settlement agreements referred to below are available from the Service and are part of the administrative record for these resubmitted petition findings.

The FY 2007 appropriation of $5,193,000 for listing activities (that is, the portion of the Listing Program funding not related to critical habitat designations for species that already are listed) was fully allocated to fund work in the following categories of actions in the Listing Program: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and program management functions; and a few high-priority listing actions. The allocations for each specific listing action were identified in the Service's FY 2007 Allocation Table (part of our administrative record). Although more funds were available in FY 2007 than in previous years to work on listing actions that were not the subject of court orders or court-approved settlement agreements, based on the available funds and their allocation for these purposes, only limited FY 2007 funds were available for work on proposed listing determinations for the following high-priority candidate species: 3 southeastern aquatic species, all with LPN 2 (Georgia pigtoe, interrupted rocksnail, and rough hornsnail); 2 species from the island of Oahu, Hawaii, both with LPN 2 (*Doryopteris takeuchii* and *Melicope hiiakae*); 1 species from the island of Molokai, Hawaii, with LPN 2 (*Phyllostegia hispida*); 31 species from the island of Kauai, Hawaii, including 24 species with LPN 2 and 7 other candidates included in the listing determination package for the sake of efficiency because they overlap geographically and/or have the same threats (Kauai creeper, *Drosophila attigua, Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea eleeleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine mezii, Pittosporum napaliense, Platydesma rostrata, Pritchardia hardyi, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae*); and 4 Hawaiian damselflies, all with LPN 2 (*Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion pacificum*).

FY 2007 listing allocation	Allocated	Available balance
FY07 Appropriation (including space reprogramming)	$5,193,000	$5,193,000
Space reprogramming (program's portion of rent for building space)	216,778	4,976,222
Regional & Washington Offices (staff salaries & benefits and administrative costs)	1,674,012	3,302,210
90-day findings	604,617	2,697,593
12-month findings	830,193	1,867,400
Proposed Listing/Critical Habitat	963,000	904,400
Economic Analysis (for Critical Habitat)	504,400	400,000
Final Listing/CH	300,000	100,000
Attorney Fees/Litigation Expenses	100,000	0

Specific details regarding the individual actions taken using the FY 2007 funding, which precluded our ability to undertake listing proposals for candidate species, except the species noted above, are provided below (information on the cost of individual actions is part of our administrative record).

In addition to being precluded by lack of available funds, work on proposed rules for candidates with lower priority (i.e., those that have LPNs of 4–12) is also precluded by the need to issue proposed rules for higher-priority species facing high-magnitude, imminent threats (i.e., LPNs of 1–3). We currently have more than 120 species with an LPN of 2 (see Table 1).

We further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: IUCN Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations comprise a list of approximately 40 candidate species that have the highest priority to receive funding to work on a proposed listing determination. Note, to be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as species with LPN of 2. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations.

Thus, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all warranted but precluded, except for the candidate species listed above.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add qualified species to, and remove qualified species from, the Lists. (We note that in this CNOR we do not discuss specific actions taken on progress towards removing species from the Lists because that work is conducted using appropriations for our Recovery program, a separately budgeted component of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Our expeditious progress in FY 2007 in the Listing Program, through September 30, 2007, included preparing and publishing the following:

FY 2007 COMPLETED LISTING ACTIONS AS OF 09/30/2007

Publication date	Title	Actions	FR pages
10/11/2006	Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered.	Notice of withdrawal, Threats eliminated.	71 FR 59700–59711.
10/11/2006	Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*).	Notice of 12-month petition finding, Not warranted.	71 FR 59711–59714.
11/14/2006	12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	71 FR 66292–66298.
11/14/2006	90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf Of Maine Distinct Population Segment.	Notice of 90-day petition finding, Substantial.	71 FR 66298–66301.
11/21/2006	90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 67318–67325.
12/5/2006	90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 70483–70492.

FY 2007 COMPLETED LISTING ACTIONS AS OF 09/30/2007—Continued

Publication date	Title	Actions	FR pages
12/6/2006	12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	71 FR 70717–70733.
12/6/2006	90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment.	Notice of 90-day petition finding, Not substantial.	71 FR 70715–70717.
12/14/2006	90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered.	Notice of 5-year Review, Initiation Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial.	71 FR 75215–75220.
12/19/2006	Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat.	Notice of withdrawal, More abundant than believed, or diminished threats.	71 FR 76023–76035.
12/19/2006	90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 76057–76079.
1/9/2007	12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule.	Notice of 12-month petition finding, Warranted. Proposed Listing, Threatened	72 FR 1063–1099.
1/10/2007	Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx.	Clarification of findings	72 FR 1186–1189.
1/12/2007	Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass).	Notice of withdrawal, More abundant than believed, or diminished threats.	72 FR 1621–1644.
2/2/2007	12-Month Finding on a Petition To List the American Eel as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 4967–4997.
2/13/2007	90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 6699–6703.
2/13/2007	90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6703–6707.
2/14/2007	90-Day Finding on a Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6998–7005.
2/21/2007	90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review.	Notice of 5-year Review, Initiation Notice of 90-day petition finding, Not substantial.	72 FR 7843–7852.
3/8/2007	90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 10477–10480.
03/29/2007	90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 14750–14759.
04/24/2007	Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling.	Notice of 12-month petition finding, Not warranted.	72 FR 20305–20314.
05/02/2007	12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	72 FR 24253–24263.

FY 2007 COMPLETED LISTING ACTIONS AS OF 09/30/2007—Continued

Publication date	Title	Actions	FR pages
05/22/2007	Status of the Rio Grande Cutthroat Trout.	Notice of Review	72 FR 28864–28665.
05/30/2007	90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 29933–29941.
06/05/2007	12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered.	Notice of Review	72 FR 31048–31049.
06/06/2007	90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 31256–31264.
06/13/2007	12-Month Finding for a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 32589–32605.
06/25/2007	12-Month Finding on a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*).	Notice of amended 12-month petition finding, Warranted but Precluded.	72 FR 34657–34661.
07/05/2007	12-Month Finding on a Petition To List the Casey's June Beetle (*Dinacoma caseyi*) as Endangered With Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	72 FR 36635–36646.
08/15/2007	90-Day Finding on a Petition To List the Yellowstone National Park Bison Herd as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 45717–45722.
08/16/2007	90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 46023–46030.
8/28/2007	12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered.	Notice of Review	72 FR 49245–49246.
9/11/2007	90-Day Finding on a Petition To List Kenk's Amphipod, Virginia Well Amphipod, and the Copepod Acanthocyclops columbiensis as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 51766–51770.
9/18/2007	12-Month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From Sclerocactus glaucus to Sclerocactus brevispinus, S. glaucus, and S. wetlandicus.	Notice of 12-month petition finding for uplisting, Warranted but precluded.	72 FR 53211–53222.

Our expeditious progress also includes work on listing actions for 68 species for which decisions were not completed as of the end of FY 2007. These actions are listed below; we are conducting work on those actions in the top section of the table under a deadline set by a court, actions in the middle section of the table to meet statutory timelines, that is, timelines required under the Act, and actions in the bottom section of the table are high priority listing actions:

LISTING ACTIONS FUNDED BUT NOT COMPLETED IN FY2007

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Wolverine	12-month petition finding (remand).
Western sage grouse	90-day petition finding (remand).
Queen Charlotte goshawk	Final listing determination.
Rio Grande cutthroat trout	Candidate assessment (remand).
Statutory Listing Actions	
Polar bear	Final listing determination.
Ozark chinquapin	90-day petition finding.
Kokanee	90-day petition finding.
Black-footed albatross	90-day petition finding.
Tucson shovel-nosed snake	90-day petition finding.

LISTING ACTIONS FUNDED BUT NOT COMPLETED IN FY2007—Continued

Species	Action
Gopher tortoise—Florida population	90-day petition finding.
Sacramento valley tiger beetle	90-day petition finding.
Eagle lake trout	90-day petition finding.
Smooth billed ani	90-day petition finding.
Mojave ground squirrel	90-day petition finding.
Gopher tortoise—eastern population	90-day petition finding.
Bay Springs salamander	90-day petition finding.
Tehachapi slender salamander	90-day petition finding.
Coaster brook trout	90-day petition finding.
Mojave fringe-toed lizard	90-day petition finding.
Evening primrose	90-day petition finding.
Palm Springs pocket mouse	90-day petition finding.
Northern leopard frog	90-day petition finding.
Mountain whitefish—Big Lost River population	90-day petition finding.
Giant Palouse earthworm	90-day petition finding.
Shrike, Island loggerhead	90-day petition finding.
Cactus ferruginous pygmy owl	90-day petition finding.
High Priority Listing Actions	
3 Southeastern aquatic species	Proposed listing
2 Oahu plants	Proposed listing
31 Kauai species	Proposed listing
4 Hawaiian damselflies	Proposed listing
Phyllostegia hispida	Proposed listing

We also funded work on resubmitted petitions findings for 203 candidate species and 5 listed species (species petitioned prior to the last CNOR). Note we have not updated our resubmitted petition finding for the Columbia Basin population of the greater sage-grouse in this notice as we are considering new information and will update our findings at a later date. We also have not updated our resubmitted petition findings for the 41 candidate species for which we are preparing proposed listing determinations, which will be published at a later date (see summaries below). As explained above, these resubmitted petition findings are required by statute, and findings for these 203 candidates and 5 listed species are being published as part of this CNOR. We also funded revised 12-month petition findings for 4 candidate species that we are removing from candidate status, which are being published as part of this CNOR (see *Summary of Candidate Removals*). We are also funding work on the next annual review of those resubmitted petition findings, which will be published as part of the next CNOR. Because the majority of these species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Although we have not been able to resolve the listing status of many of the candidates, several programs in the Service contribute to the conservation of these species. In particular, we have a separate budgeted program, the Candidate Conservation program, which focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. If sufficiently successful, this eliminates the need to list them, allowing us to remove them from the candidate list. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, local governments, private landowners, and private conservation organizations) to address the threats to candidate species and other species at risk. We are actively engaged in the conservation of these species and have, to-date, signed more than 100 Candidate Conservation Agreements and 16 Candidate Conservation Agreements with Assurances. We are implementing these voluntary conservation agreements for more than 140 species covering 5 million acres of habitat.

Through sustained implementation of strategically designed conservation efforts, we are actively working to conserve many candidate species. In some instances, this culminates in making listing unnecessary for species that are proposed or candidates for listing. Recent examples include the Cow Head tui chub, Beaver Cave beetle, Surprising Cave beetle, and Warm Spring zaitzevian riffle beetle.

Findings for Petitioned Candidate Species

For our revised 12-month petition findings for species we are removing from candidate status, see summaries above under *''Summary of Candidate Removals.''*

Mammals

Pacific Sheath-tailed Bat, American Samoa DPS (*Emballonura semicaudata semicaudata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive

distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the CNMI), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined drastically in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis,* endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)); *E. s. sulcata,* occurring in Chuuk and Pohnpei; *E. s. palauensis,* found in Palau; and *E. s. semicaudata,* occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment form addresses the distinct population segment of *E. s. semicaudata* that occurs in American Samoa.

E. s. semicaudata historically occurred in American and Independent Samoa, Tonga, Fiji, and Vanuatu. It is extant in Fiji and Tonga, but may be extirpated from Vanuatu and Independent Samoa. There is some concern that it is also extirpated from American Samoa, where surveys are currently ongoing to ascertain its status. The factors that have led to the decline of this subspecies are poorly understood; however, current threats to this subspecies include habitat loss, predation by introduced species, and its small population size and distribution, which make the taxon extremely vulnerable to extinction due to typhoons and similar natural catastrophes. The Pacific sheath-tailed bat may also by susceptible to disturbance to roosting caves. The LPN for *E. s. semicaudata* is 3, because the magnitude of the threats is high, the threats are imminent, and the taxon in question is a distinct population segment of a subspecies.

Pacific Sheath-tailed Bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the CNMI), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined drastically in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis,* endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)); *E. s. sulcata,* occurring in Chuuk and Pohnpei; *E. s. palauensis,* found in Palau; and *E. s. semicaudata,* occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment form addresses the Mariana Islands subspecies. *E. s. rotensis* is historically known from the Mariana Islands and formerly occurred on Guam and in the CNMI on Rota, Aguiguan, Tinian (known from prehistoric records only), Saipan, and possibly Anatahan and Maug. Currently, *E. s. rotensis* appears to be extirpated from all but one island in the Mariana archipelago. The single remaining population of this subspecies occurs on Aguiguan, CNMI.

Threats to this subspecies have not changed over the past year. The primary threats to the subspecies are habitat loss and degradation as a result of feral goat (*Capra hircus*) activity on the island of Aguiguan and the taxon's small population size and limited distribution. Predation by nonnative species and human disturbance are also potential threats to the subspecies. The subspecies may be near the point where stochastic events, such as typhoons, are increasingly likely to affect its continued survival. The disappearance of the remaining population on Aguiguan would result in the extinction of the subspecies. The LPN for *E. s. rotensis* remains at 3 because the magnitude of the threats is high, the threats are imminent, and the taxon in question is a subspecies.

New England cottontail (*Sylvilagus transitionalis*)—The following summary is based on information from our files and information collected during the public comment period on the 90-day petition finding. We received the petition on August 30, 2000. The 90-day finding was published on June 30, 2004 (69 FR 39395).

The New England cottontail (NEC) is a medium to large-sized cottontail rabbit that may reach 1,000 grams in weight, and is one of two species within the genus *Sylvilagus* occurring in New England. New England cottontails are considered habitat specialists, in so far as they are dependent upon early-successional habitats typically described as thickets. The species is the only endemic cottontail in New England. Historically, the NEC ranged from southeastern New York (east of the Hudson River) north through the Champlain Valley, southern Vermont, the southern half of New Hampshire, southern Maine and south throughout Massachusetts, Connecticut and Rhode Island. The current range of the NEC has declined substantially and occurrences have become increasingly separated. The species' distribution is fragmented into five apparently isolated metapopulations in about 14 percent of the species' historic range. The area occupied by the cottontail has contracted from approximately 90,000 sq km to 12,180 sq km. It is estimated that less than one third of the occupied sites occur on lands in conservation status and fewer than 10 percent are being managed for early successional forest species.

The primary threat to the New England cottontail is loss of habitat through succession and alteration. Isolation of occupied patches by areas of unsuitable habitat and high predation rates are resulting in local extirpation of New England cottontails from small patches. The range of the New England cottontail has contracted by 75 percent or more since 1960 and current land uses in the region indicate that the rate of change, about two percent range loss per year, will continue. Additional threats include competition for food and habitat with introduced eastern cottontails and large numbers of native white-tailed deer; inadequate regulatory mechanisms in effect to protect the habitat; and mortality from predation. Based on threats of high magnitude that are imminent, we assigned this species an LPN of 2.

Fisher, West Coast DPS (*Martes pennanti*)—The following summary is based on information in our files and in the Service's initial warranted-but-precluded finding published in the **Federal Register** on April 8, 2004 (68 FR 18770). The fisher is a carnivore in the family Mustelidae and is the largest member of the genus Martes. Historically, the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains, and Sierra Nevada in California. The fisher is believed to be extirpated or reduced

to scattered individuals from the lower mainland of British Columbia through Washington and in the central and northern Sierra Nevada range in California. Native populations of fisher currently occur in the North Coast Ranges of California, the Klamath-Siskiyou Mountains of northern California and southern Oregon, and in isolated populations occurring in the southern Sierra Nevada in California. Descendents of a fisher reintroduction effort also occur in the southern Cascade Range in Oregon. There is a lack of precise empirical data on West Coast DPS fisher numbers. However, there is a lack of detections over much of the fisher's historic range, even with standardized survey and monitoring efforts in California, Oregon, and Washington. There is also a high degree of genetic relatedness within some populations, and populations of native fisher in California are separated by four times the species' maximum dispersal distance. The above listed factors all indicate that the likely extant fisher populations are small and isolated from one another.

Major threats that fragment or remove key elements of fisher habitat include various forest vegetation management practices such as timber harvest and fuels reduction treatments. Other potential major threats include: Stand-replacing fire, Sudden Oak Death Phytophthora, urban and rural development, recreation development, and highways. Major threats to fisher that lead to direct mortality and injury to fisher include: Collisions with vehicles; predation; and viral borne diseases such as rabies, parvovirus, canine distemper, and *Anaplasma phagocytophilum.* Existing regulatory mechanisms on Federal, State, and private lands affect key elements of fisher habitat and do not provide sufficient certainty that conservation efforts will be effective or will be implemented. The magnitude of threats is high as they occur across the range of the DPS resulting in a negative impact on fisher distribution and abundance. However, the threats are nonimminent as the greatest long-term risks to the fisher in its west coast range are the subsequent ramifications of the isolation of small populations, and the three remaining areas containing fisher populations appear to be stable or not rapidly declining based on recent survey and monitoring efforts. Therefore, we assigned an LPN of 6 to this population.

Mazama pocket gopher (*Thomomys mazama* ssp. *couchi, douglasii, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli, yelmensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received December 11, 2002. Since publication of our last CNOR, the Brush Prairie pocket gopher was recently discovered to have been erroneously assigned to another species, *T. talpoides douglasii* (a northern pocket gopher). Mitochondrial DNA analysis determined that it is actually a subspecies of *T. mazama,* thus we are now including this subspecies in our candidate list as *T. m. douglasii.* Seven of these nine subspecies of pocket gopher are associated with glacial outwash prairies in western Washington (*T. m. melanops* is found on alpine meadows in Olympic National Park, and *T. m. douglasii* is found in extreme southwest Washington). Of these seven subspecies, five are likely still extant (*couchi, glacialis, pugetensis, tumuli,* and *yelmensis*); two of the subspecies (*louiei* and *tacomensis*) are likely extinct. Few of these glacial outwash prairies remain in Washington today. Historically, such prairies were patchily distributed, but the area they occupied was approximately 170,000 acres. Now, residential and commercial development, and ingrowth of woody and/or nonnative vegetation (often due to fire-regime alteration) have further reduced their extent of suitable habitats. In addition, development in or adjacent to these prairies has likely increased predation on Mazama pocket gophers by dogs and cats.

The magnitude of threat is high due to populations with patchy and isolated distributions in habitats highly desirable for development and subject to a wide variety of human activities that permanently alter the habitat. The threat of invasive plant species to the quality of a highly specific habitat requirement is high and constant. There are few known populations of each subspecies. A limited dispersal capability and the loss and degradation of additional patches of appropriate habitat will further isolate populations and increase their vulnerability to extinction. Loss of any of the subspecies will reduce the genetic diversity and the likelihood of continued existence of the *Thomomys mazama* subspecies complex in Washington. The threats are imminent as they are ongoing. Gravel pits threaten persistence of one of the subspecies (Roy Prairie), and the largest populations of two other subspecies (Shelton and Olympia) are located on airports with planned development. Yelm pocket gophers are also threatened by proposed development on Fort Lewis, and ongoing development in Olympia. Thus, we assign an LPN of 3 to these subspecies.

Palm Springs round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Palm Springs round-tailed ground squirrel is one of four recognized subspecies of round-tailed ground squirrels. The range of this squirrel is limited to the Coachella Valley region of Riverside County, California. Primary habitat for the Palm Springs round-tailed ground squirrel is the dunes and hummocks associated with *Prosopis glandulosa* var. *torreyana* (honey mesquite) and to a lesser extent those dunes and hummocks associated with *Larrea tridentata* (creosote), or other vegetation. Rapid growth of desert cities such as Palm Springs and Palm Desert in the Coachella Valley has raised concerns about the conservation of the narrowly distributed Palm Springs round-tailed ground squirrel. Urban development and drops in the groundwater table have eliminated 90 percent of the honey mesquite in the Coachella Valley. Furthermore, urban development has fragmented habitat occupied by this squirrel thereby isolating populations. The high rate of urban development and associated lowering of the groundwater table that was likely historically responsible for the high losses of honey mesquite sand dune/hummocks habitat continues today. We continue to assign the Palm Springs ground squirrel subspecies a listing priority of 3 because the threats are ongoing and are of a high magnitude as they affect a large portion of its' range.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information contained in our files. The southern Idaho ground squirrel is endemic to four counties in southwest Idaho; its total known range is approximately 425,630 hectares (1,051,752 acres). Threats to southern Idaho ground squirrels include: habitat deterioration and fragmentation; direct killing from shooting, trapping, or poisoning; predation; competition with Columbian ground squirrels; and inadequacy of existing regulatory mechanisms. Habitat deterioration and fragmentation appear to be the primary threats to the species. Nonnative annuals now dominate much of this species' range, have changed the species composition of vegetation, and have altered the fire regime in a perpetuating cycle throughout much of the range. Habitat deterioration, destruction, and

fragmentation are thought to have resulted in the current patchy distribution of southern Idaho ground squirrels. Based on recent genetic work, southern Idaho ground squirrels are subject to more genetic drift and inbreeding than expected. Cost effective methods of habitat restoration are currently unknown for southern Idaho ground squirrels. Two Candidate Conservation Agreements with Assurances (CCAAs) have been completed for this species, both of which allow agency access for population and habitat surveys and habitat enhancement/restoration work. The magnitude of threat is moderate for this species because habitat degradation remains the primary threat to the species in some areas where the species is found. While some habitat restoration has taken place, restoration has not yet occurred on a meaningful scale to further reduce the magnitude or eliminate this threat. The immediacy of the threat is imminent for this species due to the ongoing threat from the prevalence and dominance of nonnative vegetation and the current patchy distribution of the species. Thus, we assign an LPN of 9 to this subspecies.

Washington ground squirrel (*Spermophilus washingtoni*)—The following summary is based on information contained in our files and in the petition we received on March 2, 2000. The Washington ground squirrel is one of the smallest members of the subgenus Spermophilus and is found within the shrub-steppe habitat of the Columbia Basin ecosystem of Oregon and Washington. The soil types used by the squirrels are distributed sporadically within the species' range, and have been significantly fragmented by human development in the Columbia Basin. Approximately two-thirds of the Washington ground squirrel's total historical range has been converted to agriculture. When agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that agriculture (along with other development) continues to eliminate Washington-ground-squirrel habitat in portions of its range.

Most remaining habitat is threatened by the occurrence and spread of nonnative species, particularly cheatgrass. Nonnative plants threaten squirrels by out-competing native plants, thereby altering available cover, food quantity and quality, and altering fire intervals. The ultimate effects of cheatgrass invasion on this species are not fully understood. While Washington ground squirrels eat cheatgrass, it is not likely a viable long-term dietary option since cheatgrass populations are unstable during drought and cheatgrass contains large amounts of indigestible silica which may make it a poor nutrition source. Fire recurrence intervals typically switch from 20–100 years in sagebrush-grassland ecosystems to 3–5 years in cheatgrass-dominant sites. Increased fire occurrence reduces native bunchgrass and shrub cover (by competition or preventing the re-establishment of shrub cover) and allows exotic species to further out-compete native species.

The most contiguous, least-disturbed expanse of suitable Washington-ground-squirrel habitat within the species' range occurs on the Boeing site and Naval Weapons Training Facility near Boardman, Oregon. In Washington, the largest expanse of known suitable habitat occurs on State and Federal land. In Washington, recent declines in some colonies have been precipitous for unknown (possibly weather-related) reasons. Recent surveys have located additional sites in Washington and Oregon. However, detections are primarily located in the three disjunct metapopulations, indicating that fragmentation and increased vulnerability to natural and man-made factors is still a widespread threat. In Oregon, some threats are addressed by the State listing of this species, and by the recently signed Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (Agreement).

Current threats to the long-term persistence of this species include the following: historical and current habitat loss from the conversion of habitat to agriculture and other development, habitat fragmentation, limited dispersal corridors, recreational shooting, genetic isolation and drift, spread of nonnative species, and predation. Potential threats include disease, drought, and possible competition with related ground-squirrel species in disturbed habitat at the periphery of their range. While there are a variety of conservation actions and research activities, they do not address all of the threats throughout the species' range. Due to the widespread current and potential threats to the species we conclude the magnitude of threats remains high. Because the Agreement addressed the imminent loss of a large portion of habitat to agriculture, and because there are no other known, large-scale efforts to convert suitable habitat to agriculture, the threats, overall, are nonimminent. We, therefore, kept the LPN at 5.

Birds

Spotless crake, American Samoa DPS (*Porzana tabuensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *P. tabuensis* is a small, dark, cryptic rail found in wetlands and rank scrub or forest in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa (Ofu, Tau). The genus Porzana is widespread in the Pacific, where it is represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several more cosmopolitan species, including *P. tabuensis*. No subspecies of *P. tabuensis* are recognized. The American Samoa population is the only population of spotless crakes under U.S. jurisdiction. The available information indicates that distinct populations of the spotless crake, a species not noted for long-distance dispersal, are definable. The population of spotless crakes in American Samoa is discrete in relation to the remainder of the species as a whole, which is distributed in widely separated locations. Although the spotless crake (and other rails) have dispersed widely in the Pacific, island rails have tended to reduce or lose their power of flight over evolutionary time and so become isolated (and vulnerable to terrestrial predators such as rats). The population of this species in American Samoa is therefore distinct based on geographic and distributional isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. The American Samoa population of the spotless crake links the Central and Eastern Pacific portions of the species' range. The loss of this population could cause an increase of roughly 500 miles (805 kilometers) in the disjunction between the central and eastern Polynesian portions of the spotless crake's range, and could result in the isolation of the Marquesas and Society Islands populations by further limiting the potential for even rare genetic exchange. Based on the discreteness and significance of the American Samoa population of the spotless crake, we consider this population to be a distinct vertebrate population segment which warrants review for listing under the Act.

Threats to this species have not changed over the past year. The population in American Samoa is threatened by small population size, limited distribution, predation by nonnative mammals, continued development of wetland habitat, and natural catastrophes such as hurricanes.

The co-occurrence of a known predator of ground-nesting birds, the Norway rat (*Rattus norvegicus*), and the only known population of the spotless crake under U.S. jurisdiction, along with the extremely restricted observed distribution and low numbers, indicate that the American Samoa distinct population segment of this species continues to merit status as a candidate for listing. Based on our assessment of existing information about the imminence and high magnitude of these threats, we assigned the spotless crake an LPN of 3.

Kauai creeper (*Oreomystis bairdi*)—We have not updated our candidate assessment for this species as we are currently developing a proposed listing rule.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*)—The following summary is based on information contained in our files and the petition we received on February 9, 1998. See also our 12-month petition finding published on July 25, 2001 (66 FR 38611). The yellow-billed cuckoo is a medium-sized bird of about 12 inches (30 centimeters) in length with a slender, long-tailed profile and a fairly stout and slightly down-curved bill. Plumage is grayish-brown above and white below, with rufous primary flight feathers with the tail feathers boldly patterned with black and white below. Western cuckoos breed in large blocks of riparian habitats (particularly woodlands with cottonwoods (*Populus fremontii*) and willows (*Salix* sp.). Dense understory foliage appears to be an important factor in nest site selection, while cottonwood trees are an important foraging habitat in areas where the species has been studied in California. We consider the yellow-billed cuckoos that occur in the western United States as a distinct population segment (DPS). The area for this DPS is west of the crest of the Rocky Mountains.

The threats currently facing the yellow-billed cuckoo include habitat loss, cattle grazing, and pesticide application. Principal causes of riparian habitat losses are conversion to agricultural and other uses, dams and river flow management, stream channelization and stabilization, and livestock grazing. Available breeding habitats for cuckoos have also been substantially reduced in area and quality by groundwater pumping and the replacement of native riparian habitats by invasive nonnative plants, particularly tamarisk. Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the western United States. The effects include changes in plant community structure and species composition and in relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology. Livestock grazing in riparian habitats typically results in reduction of plant species diversity and density, especially of palatable broadleaf plants like willows and cottonwood saplings, and is one of the most common causes of riparian degradation. In addition to destruction and degradation of riparian habitats, pesticides may affect cuckoo populations. In areas where riparian habitat borders agricultural lands, e.g., in California's central valley, pesticide use may indirectly affect cuckoos by reducing prey numbers, or by poisoning nestlings if sprayed directly in areas where the birds are nesting. We retain an LPN of 3 for the yellow-billed cuckoo due to imminent threats of a high magnitude.

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi stairi*)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Streaked horned lark (*Eremophila alpestris strigata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on December 11, 2002. The streaked horned lark occurs in Washington and Oregon, and is thought to be extirpated in British Columbia, Canada. In Washington, surveys show that there are approximately 330 remaining breeding birds. In Oregon, the breeding population is estimated to be approximately 400 birds.

The streaked horned lark's breeding habitat continues to be threatened by loss and degradation due to conversion of native grasslands to other uses (such as agriculture, homes, recreational areas, and industry), encroachment of woody vegetation, and invasion of nonnative plant species (e.g., Scot's broom, sod-forming grasses, and beachgrasses). Wintering habitats are seemingly few, and susceptible to unpredictable conversion to unsuitable over-wintering habitat. Where larks inhabit manmade habitats similar in structure to native prairies (such as airports, military reservations, agricultural fields, and dredge-formed islands), or where they occur adjacent to human habitation, they are subjected to a variety of unintentional human disturbances such as mowing, recreational and military activities, plowing, flooding, and dredge spoil dumping during the nesting season, as well as intentional disturbances such as at the McChord Air Force Base where falcons and dogs are used to haze the birds in order to prevent aircraft collisions. In some areas, landowners have taken steps to improve streaked-horned-lark nesting habitat.

The magnitude of threat is high due to small populations with low genetic diversity and patchy and isolated habitats in areas desirable for development, many of which remain unsecured. The threat of invasive plant species is high and constant, aside from a few restoration sites. The numbers of individuals are low and the numbers of populations are few. Over-wintering birds are concentrated in larger flocks and subject to unpredictable wintering habitat loss (especially in Oregon), potentially affecting a large portion of the population at one time. In Washington, known populations occur on airports, military bases, coastal beaches, and Columbia River islands, where management, training activities, recreation, and dredge spoil dumping continue to negatively affect streaked-horned-lark breeding and wintering. In Oregon, breeding and wintering sites occur on Columbia River islands, in cultivated grass fields, grazed pastures, fallow fields, roadside shoulders, Christmas tree farms, and wetland mudflats. Such areas continue to be subject to negative impacts such as dredge spoil dumping, development, plowing, mowing, pesticide and herbicide applications, trampling, vehicle traffic, and recreation.

The threats are imminent due to the continued loss of suitable lark habitat, risks to the wintering populations, plans for development on and adjacent to several of its nesting areas, use of falcons and dogs to haze breeding birds at McChord AFB, planned and/or continued expansions of the McChord AFB West Ramp and Olympia Airport, and annual Air Force military training and fire-bombing on top of lark nesting habitat. We continue to assign an LPN of 3 to this species.

Red knot (*Calidris canutus rufa*)—The following summary is based on information from our files and information provided by petitioners. We received one petition on August 9, 2004, and two others were each received on August 5, 2005. The *rufa* subspecies is one of six recognized subspecies of red knot and one of three subspecies occurring in North America (hereafter all mention of red knot refers strictly to the *rufa* subspecies). This subspecies makes one of the longest distance

migrations known in the animal kingdom as it travels between breeding areas in the central Canadian Arctic and wintering areas that are primarily in southern South America along the coast of Chile and Argentina. They migrate along the Atlantic coast of the United States, where they may be found from Maine to Florida. The Delaware Bay area (in Delaware and New Jersey) is the largest known spring migration stopover area, with far fewer migrants congregating elsewhere along the Atlantic coast. The concentration in the Delaware Bay area occurs from the middle of May to early June, corresponding to the spawning season of horseshoe crabs. The knots feed on horseshoe crab eggs, rebuilding energy reserves needed to complete migrations to the Arctic and arrive on the breeding grounds in good condition. Surveys at wintering areas and at Delaware Bay during spring migration indicate a substantial decline in recent years. At the Delaware Bay area, peak counts between 1982 and 1998 were as high as 95,360 knots. Although counts may vary considerably between years, some of the population fluctuations can be attributed to predator-prey cycles in the breeding grounds, and counts show that knots rebound from such reductions. In the past, horseshoe crab eggs were so numerous that a knot could eat enough in two to three weeks to double its weight. Research shows that from 1997 to 2002 an increasing proportion of red knots leaving the Delaware Bay failed to achieve threshold departure masses needed to fly to breeding grounds and survive an initial few days of snow cover, and this corresponded to reduced annual survival rates. Recently, peak counts at the Delaware Bay area have been lower than in the past and do not show a rebound. The peaks were 13,315 in 2004, 15,345 in 2005, and 13,455 in 2006. Counts in recent years at the principal wintering areas in South America also are substantially lower than in the past and do not show a rebound.

The primary factor threatening the red knot is destruction and modification of its habitat, particularly the reduction in key food resources resulting from reductions in horseshoe crabs, which are harvested primarily for use as bait and secondarily to support a biomedical industry. Commercial harvest increased substantially in the 1990's. Since 1999, a series of timing restrictions and substantially lower harvest quotas have been adopted by the Atlantic States Marine Fisheries Commission (ASMFC), as well as New Jersey and Delaware. In May 2006, the ASMFC adopted restrictions effective from October 1, 2006, to September 30, 2008, including a prohibition on harvest and landing of horseshoe crabs in New Jersey and Delaware from January 1 through June 7, harvest of males only from June 8 through December 31, and harvest limited to no more than 100,000 horseshoe crabs per state per year. The ASMFC also adopted other restrictions applicable to Maryland and Virginia. New Jersey has established restrictions which supersede those of the ASMFC; as a result there is a moratorium on all horseshoe crab harvest in New Jersey from May 15, 2006 through June 7, 2008, after which the restrictions adopted by ASMFC apply. In February 2007, Delaware imposed a two-year moratorium, effective January 1, 2007, on harvest of horseshoe crabs within Delaware lands or waters. In June 2007, following litigation by two businesses involved in the harvesting and sale of horseshoe crabs, Delaware's moratorium was overturned. Consequently Delaware developed regulations allowing for a male-only horseshoe crab harvest, consistent with restrictions adopted by ASMFC. The reductions in commercial harvest since 1999 are substantial: 726,660 horseshoe crab landings for bait were reported in 1999 in Delaware and New Jersey, compared to 173,177 in 2004. However, we do not know whether horseshoe crab populations will rebuild or how long a lag time there may be in increased availability of eggs, as they need 8 to 10 years to reach sexual maturity and other key information for estimating population response is lacking. A survey in Delaware Bay showed spawning activity was stable or slightly declining from 1999 to 2004. In 2004, availability of horseshoe crab eggs on principal shorebird foraging beaches increased over recent years. The peak number of migrant red knots observed at Delaware Bay increased slightly in 2005 compared to 2004, and in 2006 the peak count was similar to that in 2004. Also, body weights of red knots at the time of departure from Delaware Bay improved in 2005 over previous years. Counts of red knots at key wintering areas in South America, although much reduced from the past, were similar in 2007 to the counts in 2006 and 2005. Thus in recent years the number of knots has been much lower than in the past and the trend in the abundance is not improving despite a four-fold reduction in horseshoe crab landings since the late 1990s.

Other identified threat factors include habitat destruction due to beach erosion and various shoreline protection and stabilization projects that are impacting areas used by migrating knots for foraging, the inadequacy of existing regulatory mechanisms, human disturbance, and competition with other species for limited food resources. Also, the concentration of red knots in the Delaware Bay areas and at a relatively small number of wintering areas make the species vulnerable to potential large-scale events in those areas such as oil spills or severe weather. Overall, we conclude that the major threat, the modification of habitat through harvesting of horseshoe crabs to such an extent that it puts the viability of the knot at substantial risk, is of a high magnitude, but is nonimminent because of reductions and restrictions on harvesting horseshoe crabs. Based on nonimminent threats of a high magnitude, we retain an LPN of 6 for this subspecies.

Kittlitz's murrelet (*Brachyramphus brevirostris*)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files and the petition we received on May 9, 2001.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files and the petition we received on April 16, 2002.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files and the petition received on October 5, 1995. Additional information can be found in the 12-month finding published on June 7, 1998 (63 FR 31400). Biologists estimate that the occupied range has declined by 92 percent since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, cumulative habitat degradation caused by severe grazing, woody plant invasion of open prairies, fire suppression, herbicides, and habitat fragmentation caused by structural and transportation developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of these individual threats. Habitat fragmentation can be a threat to the species through several mechanisms: remaining habitat patches may become smaller than necessary to meet the requirements of individuals and populations, necessary habitat

heterogeneity may be lost to areas of homogeneous habitat structure, areas between habitat patches may harbor high levels of predators or brood parasites, and the probability of recolonization decreases as the distance between suitable habitat patches expands.

Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged and lesser prairie-chickens continue to warrant federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range is moderate, and that the threats are ongoing and thus, imminent. Consequently, an LPN of 8 remains appropriate for the species.

Greater sage-grouse, Columbia Basin DPS (*Centrocercus urophasianus*)—We have not updated our finding with regard to the Columbia Basin DPS of the greater sage-grouse in this notice. The following summary is based on information in our files and a petition, dated May 14, 1999, requesting the listing of the Washington population of western sage-grouse (*C. u. phaios*). Pursuant to Service policy (61 FR 4722), on May 7, 2001, we concluded that listing the Columbia Basin DPS of western sage-grouse, which was historically found in northern Oregon and central Washington, was warranted, but precluded by higher priority listing actions (66 FR 22984). In the May 4, 2004, notice, we found that a listing proposal for this DPS was still warranted but precluded by higher priorities, and maintained its LPN of 6. In the intervening time, the Service received two petitions requesting the listing of the entire ranges of the nominal western and eastern subspecies of greater sage-grouse, dated January 24 and July 3, 2002, respectively. However, based on communications with recognized sage-grouse experts, disagreement as to the validity of an eastern and western subspecies of sage-grouse existed. Due to this disagreement in the scientific community, the Service evaluated the available information with regard to our section 4 listing responsibilities under the Endangered Species Act (USFWS 1992). The Service subsequently concluded that the eastern and western subspecies designations for greater sage-grouse are inappropriate given current taxonomic standards (68 FR 6500 and 69 FR 933). The Institute for Wildlife Protection filed a court complaint, dated June 6, 2003, challenging the merits of the 90-day finding. On August 10, 2004, a U.S. District Court judge issued an order in favor of the USFWS and dismissing the plaintiff's case. An appeal, dated November 24, 2004, was filed by the Institute for Wildlife Protection regarding this decision. On March 3, 2006, the 9th Circuit Court remanded the finding back to the Service to revisit the 90-day finding regarding the conclusion that the western sage-grouse is not a subspecies. The Court did uphold that the petitioned population (western sage-grouse) does not constitute a DPS. We will publish an updated finding addressing the Columbia Basin DPS in the **Federal Register** following our assessment of the remand.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition we received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small seabird that is found in several areas of the subtropical Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations—one in Japan, one in Hawaii, and one in the Galapagos. Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. Band-rumped storm-petrels are most commonly found in close proximity to breeding islands. The three populations in the Pacific are separated by long distances across the ocean where birds are not found. Extensive at-sea surveys of the Pacific have revealed a broad gap in distribution of the band-rumped storm-petrel to the east and west of the Hawaiian Islands, indicating the distribution of birds in the central Pacific around Hawaii is disjunct from other nesting areas. The available information indicates that distinct populations of band-rumped storm-petrels are definable and that the Hawaiian population is distinct based on geographic and distributional isolation from other band-rumped storm-petrel populations in Japan, the Galapagos, and the Atlantic Ocean. A population also can be considered discrete if it is delimited by international boundaries across which exist differences in management control of the species. The Hawaiian population of the band-rumped storm-petrel is the only population within U.S. borders or under U.S. jurisdiction. Loss of the Hawaiian population would cause a significant gap in the distribution of the band-rumped storm-petrel in the Pacific, and could result in the complete isolation of the Galapagos and Japan populations without even occasional genetic exchanges.

The band-rumped storm-petrel probably was common on all of the main Hawaiian Islands when Polynesians arrived about 1,500 years ago, based on storm-petrel bones found in middens on the island of Hawaii and in excavation sites on Oahu and Molokai. Nesting colonies of this species in the Hawaiian Islands currently are restricted to remote cliffs on Kauai and Lehua Island and high-elevation lava fields on Hawaii. Vocalizations of the species were heard in Haleakala Crater on Maui as recently as 2006; however, no nesting sites have been located on the island to date. The significant reduction in numbers and range of the band-rumped storm-petrel is due primarily to predation by nonnative predators introduced by humans, including the domestic cat (*Felis catus*), small Indian mongoose (*Herpestes auropunctatus*), common barn owl (*Tyto alba*), black rat (*R. rattus*), Polynesian rat (*Rattus exulans*), and Norway rat (*R. norvegicus*), which occur throughout the main Hawaiian Islands, with the exception of the mongoose, which is not established on Kauai. Attraction of fledglings to artificial lights and collisions with artificial structures such as communication towers and utility lines are also threats. Erosion of nest sites caused by the actions of nonnative ungulates is a potential threat in some locations. Efforts are underway in some areas to reduce light pollution and mitigate the threat of collisions, but there are no large-scale efforts to control nonnative predators in the Hawaiian Islands. Based on the imminent threats of a high magnitude, we assign this distinct population segment an LPN of 3.

Elfin-woods warbler (*Dendroica angelae*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The elfin-woods warbler is a small entirely black and white warbler, distinguished by its white eyebrow stripe, white patches on ear covers and neck, incomplete eye ring, and black crown. *Dendroica angelae* was at first thought to occur only in the high elevation dwarf or elfin forests, but it has since been found at lower elevations, including shade coffee plantations and secondary forests. *Dendroica angelae* builds a compact cup nest, usually close to the trunk and well hidden among the epiphytes of a small

tree, and its breeding season extends from March to June. This species forages in the middle part of trees, gleaning insects from leaves in the outer portion of the tree crown. *Dendroica angelae* has been documented from four locations in Puerto Rico: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. However, it has not been recorded again in Toro Negro and Cayey, following the passing of Hurricane Hugo in 1989. In 2003 and 2004, surveys were conducted for the elfin-woods warbler in the Carite Commonwealth Forest, Toro Negro Forest, Guilarte Forest, Bosque del Pueblo, Maricao Forest and the Caribbean National Forest, but only detected the species in the latter two. Biologist recorded 778 elfin-woods warblers in the Maricao Commonwealth Forest, and 196 elfin-woods warblers in the Caribbean National Forest.

Habitat destruction from expansion of public facilities within the forests, potential construction of additional telecommunication towers and their maintenance, disruption of breeding activities from pedestrians and high human use areas, switching from shade to sun coffee plantations, timber management practices, potential predators, and catastrophic natural events such as hurricanes and forest fires, threaten this species. Although these threats are not imminent, because most of the range of *Dendroica angelae* is within protected lands the magnitude of threat to *Dendroica angelae* is considered high, due to its restricted distribution and low population numbers. Therefore, we assign an LPN of 5 to this species.

Reptiles

Sand dune lizard (*Sceloporus arenicolus*)—The following summary is based on information contained in our files and in the petition we received June 6, 2002. The sand dune lizard is endemic to a small area in southeastern New Mexico (Chaves, Eddy, Lea, and Roosevelt Counties) and adjacent west Texas (Andrews, Crane, Gaines, Ward, and Winkler Counties). Within this area, the known occupied and potentially occupied habitat is only 1,697 square kilometers (655 square miles) in New Mexico, and an area of unknown size in west Texas. The sand dune lizard's distribution is localized and fragmented (i.e., known populations are separated by vast areas of unoccupied habitat), and the species is restricted to sand dune blowouts associated with active sand dunes and shinnery oak (*Quercus harvardii*) and scattered sandsage (*Artemisia filifolia*) vegetation. Sand dune lizards are not found at sites lacking shinnery oak dune habitat.

It is clear that shinnery oak removal (e.g., by treating with the herbicide Tebuthiuron for livestock range improvements) results in dramatic reductions and extirpation of sand dune lizards. Scientists repeatedly confirmed the extirpation of sand dune lizards from areas with herbicide treatment to remove shinnery oak. In 1999, biologists estimated that about 25 percent of the total sand dune lizard habitat in New Mexico had been eliminated in the previous 10 years. The population of sand dune lizards has also been affected by oil and gas field development. An estimated 50-percent decline in sand dune lizard populations can be expected in areas with approximately 25 to 30 oil and/or gas wells per section. Because the distribution of sand dune lizards is localized and fragmented, and this species is a habitat specialist, impacts to its habitat will most likely greatly decrease populations. If current herbicide application continues and oil and gas development progresses as expected, the magnitude of threat to sand dune lizards will increase. Continued pressure to develop oil and gas resources in areas with sand dune lizards poses an imminent threat to the species. Therefore, we continue to assign this species an LPN of 2.

Eastern massasauga (*Sistrurus catenatus catenatus*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The eastern massasauga is one of three recognized subspecies of massasauga. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Wisconsin, and Ontario.

Although the current range of *S. c. catenatus* resembles the subspecies' historical range, the geographic distribution has been restricted by the loss of the subspecies from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. c. catenatus* no longer support the subspecies. *S. c. catenatus* is currently considered imperiled in every State and province which it occupies. Each State and Canadian province across the range of *S. c. catenatus* has lost more than 30 percent, and for the majority more than 50 percent, of their historical populations. Furthermore, less than 35 percent of the remaining populations are considered secure. Approximately 59 percent of the remaining *S. c. catenatus* populations occur wholly or in part on public land, and Statewide and/or site-specific Candidate Conservation Agreements with Assurances (CCAAs) are currently being developed for many of these areas in Iowa, Illinois, Michigan, and Wisconsin. In 2006, a CCAA with the Ohio Department of Natural Resources Division of Natural Areas and Preserves was completed for Rome State Nature Preserve in Ashtabula County. Populations soon to be under CCAs and CCAAs have a high likelihood of persisting and remaining viable. Other populations are likely to suffer additional losses in abundance and genetic diversity and some will likely be extirpated unless threats are removed in the near future. Because of the ongoing efforts to protect the subspecies through CCAAs, the magnitude of threats from habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution is moderate overall, with most imminent threats occurring to remaining populations on private lands. Due in large part to the numerous CCAAs currently being developed and implemented, we do not believe emergency listing is warranted and have kept the LPN at 9 for this subspecies.

Black pine snake (*Pituophis melanoleucus lodingi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from four counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the species. Most of the known Mississippi populations are concentrated on the DeSoto National Forest. Populations occurring on properties managed by State and other governmental agencies as gopher tortoise mitigation banks or wildlife sanctuaries represent the best opportunities for long-term survival of the species in Alabama. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates, which magnify other threats and increase the likelihood of local extinctions. Due to the imminent

threats of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and the continuing persistent degradation of what remains, we assigned an LPN of 3 to this subspecies.

Louisiana pine snake (*Pituophis ruthveni*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files and the petition we received on July 19, 2000.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, is the primary threat to the Sonoyta mud turtle. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the Sonoyta mud turtle occurs is one of the driest regions of the southwest. Due to continuing drought, irrigated agriculture, and development in the region, surface water in the Rio Sonoyta can be expected to dwindle further. This species may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. We retained an LPN of 3 for this subspecies because threats are of a high magnitude and continue to date, and therefore, are imminent.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files and the petition we received on May 1, 1989.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*)—The following summary is based on information contained in our files and the petition received on February 8, 2000. Also see our 12-month petition finding published on January 16, 2003 (68 FR 2283) and our amended 12-month petition finding published on June 25, 2007 (72 FR 34657). The mountain yellow-legged frog inhabits the high elevation lakes, ponds, and streams in the Sierra Nevada Mountains of California, from near 4,500 feet (ft) (1,370 meters (m)) to 12,000 ft (3,650 m). The distribution of the mountain yellow-legged frog is from Butte and Plumas counties in the north to Tulare and Inyo counties in the south. A separate population in southern California is already listed as endangered (67 FR 44382).

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that nonnative fishes and mountain yellow-legged frogs rarely co-exist. Mountain yellow-legged frogs and trout (native and nonnative) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations with negative population growth rates in the absence of immigration. To help reverse the decline of the mountain yellow-legged frog, the Sequoia and Kings Canyon National Parks have been removing introduced trout since 2001. Over 18,000 introduced trout have been removed from 11 lakes since the project started in 2001. The lakes are completely- to mostly fish-free and substantial mountain yellow-legged frog population increases have resulted. The California Department of Fish and Game (CDFG) has also removed or is in the process of removing nonnative trout from a total of between 10 and 20 water bodies in the Inyo, Humboldt-Toiyabe, Sierra, and El Dorado National Forests. In the El Dorado National Forest golden trout were removed from Leland Lakes, and attempts have been made to remove trout from two sites near Gertrude Lake and a tributary of Cole Creek; no data showing increase in mountain yellow-legged frogs at these sites was available.

In California, chytridiomycosis, more commonly known as chytrid fungus, has been detected in many amphibian species, including the mountain yellow-legged frog within the Sierra Nevada. Recent research has shown that this pathogenic fungus is widely distributed throughout the Sierra Nevada, and that infected mountain yellow-legged frogs die soon after metamorphosis. Several infected and uninfected populations were monitored in Sequoia and Kings Canyon National Parks over multiple years, documenting dramatic declines and extirpations in infected but not in uninfected populations. In the summer of 2005, 39 of 43 populations assayed in Yosemite National Park were positive for chytrid fungus.

The current distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and non-wilderness on the forests, and national parks. In several areas where detailed studies of the effects of chytrid fungus on the mountain yellow-legged frog are ongoing, substantial declines have been observed over the past several years. For example, in 2005 surveys in Yosemite National Park mountain yellow-legged frogs were not detectable at 37 percent of 113 sites where they had been observed in 2000–2002; in 2005 in Sequoia and Kings Canyon National Parks mountain yellow-legged frogs were not detected at 47 percent of sites where they had been recorded 3–8 years earlier. A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur, because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. The most recent assessment of the species status in the Sierra Nevada indicates that mountain-yellow legged frogs occur at less than 8 percent of the sites from which they were historically observed. A group of prominent scientists further suggest a 10 percent decline per year in the number of remaining *Rana mucosa* populations and urge the listing of the mountain yellow-legged frogs as endangered. Based on imminent, high-magnitude threats, we continue to assign the population of mountain yellow-legged frog in the Sierra Nevada an LPN of 3.

Oregon spotted frog (*Rana pretiosa*)—The following summary is based on information contained in our files and the petition we received on May 4, 1989. Historically, the Oregon spotted frog ranged from British Columbia to the Pit River drainage in northeastern California. Based on surveys of historical sites, the Oregon spotted frog is now absent from at least 76 percent of its former range. The majority of the remaining Oregon spotted frog populations are small and isolated. The threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, and poor water quality. Additional threats to the species are predation by nonnative fish and introduced bullfrogs; competition with bullfrogs for habitat; and diseases, such as oomycete water mold *Saprolegnia* and chytrid fungus infections. The magnitude of threat is high for this species because the small populations with patchy and isolated distributions are subject to a wide range of threats to both individuals and their habitats that

could seriously reduce or eliminate any of these isolated populations and further reduce the range of the species. Habitat restoration and management actions have not prevented a decline in the reproductive rates in some populations. The threats are imminent because each population is faced with multiple ongoing and potential threats. Therefore, we retain an LPN of 2 for the Oregon spotted frog.

Relict leopard frog (*Rana onca*)—The following summary is based on information contained in our files and the petition we received on May 9, 2002. Relict leopard frogs are currently known to occur only in two general areas in Nevada: near the Overton Arm area of Lake Mead, and Black Canyon below Lake Mead. These two areas comprise a small fraction of the historical distribution of the species, which included springs, streams, and wetlands within the Virgin River drainage downstream from the vicinity of Hurricane, Utah; along the Muddy River, Nevada; and along the Colorado River from its confluence with the Virgin River downstream to Black Canyon below Lake Mead, Nevada and Arizona. Suggested factors contributing to the decline of the species include alteration of aquatic habitat due to agriculture and water development, including regulation of the Colorado River, and the introduction of exotic predators and competitors. In 2005, the National Park Service, in cooperation with the Service and various other Federal, State, and local partners, developed a conservation agreement and strategy which is intended to improve the status of the species through prescribed management actions and protection. Conservation actions identified for implementation in the agreement and strategy include captive rearing tadpoles for translocation and refugium populations, habitat and natural history studies, habitat enhancement, population and habitat monitoring, and translocation. Conservation is proceeding under the agreement; however, additional time is needed to determine whether or not the agreement will be effective in eliminating or reducing the threats to the point that the relict leopard frog can be removed from candidate status. However, because of these conservation efforts the magnitude of existing threats is low to moderate. These threats remain nonimminent since there are no known projects or actions that would adversely affect frog populations or threaten surface water associated with known sites occupied by the frog. We assigned an LPN of 11 to this species.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Since the species was elevated to candidate status in 2001 (66 FR 54808), the known threats have increased. In particular, the 2006 discovery of the amphibian disease chytridiomycosis, caused by the pathogen *Batrachochytrium dendrobatidis*, in captive and remaining wild populations of the Ozark hellbender has made increased protection vital to persistence of this subspecies. Chytridiomycosis has proven fatal to several amphibian species worldwide, as well as to Ozark hellbenders in captivity. The majority (approximately 75 percent) of captive hellbenders at the St. Louis Zoo (St. Louis, Missouri) that have been infected with chytridiomycosis have died. Deaths relating to chytridiomycosis continue to occur as the St. Louis Zoo staff continues to search for an effective way to treat infected animals. Due to the incidence of *Batrachochytrium dendrobatidis* in the St. Louis Zoo hellbender population, in 2006 the Missouri Department of Conservation began testing wild hellbenders in Missouri for infection of the pathogen. Individuals that tested positive for the pathogen were found in all three Ozark hellbender rivers in Missouri. Although dead animals in the wild have not been seen, animals continue to be seen with increasingly severe abnormalities. These abnormalities have not been linked conclusively with the presence of *Batrachochytrium dendrobatidis*; however, considering the types of abnormalities documented (e.g., lesions, digit and appendage loss, epidermis sloughing) researchers believe there is likely a connection. In general, researchers have found that abnormalities in Ozark hellbenders are becoming increasingly more severe, often to a level that the animal is approaching death (e.g., missing digits on all/most limbs, missing all/most limbs). Recreational pressures on Ozark hellbender rivers have also increased substantially on an annual basis. The Missouri Department of Conservation reports that gigging popularity and pressure have increased, and present a significant threat to hellbenders during the breeding season as they tend to move greater distances and congregate in small groups where they are an easy target for giggers. Canoe, kayak, and motor/jet boat traffic has increased in recent years on the Jacks Fork, Current, Eleven Point, and North Fork Rivers. The popularity of these float streams has grown to the point that the National Park Service is considering alternatives to reducing the number of boats that can be launched daily by concessionaires.

To date, nothing has been done to reduce or ameliorate ongoing threats to Ozark hellbenders. The Ozarks region continues to experience rapid urbanization, expansion of industrial agricultural practices such as concentrated animal feeding operations (chickens, turkeys, hogs, cattle), and logging. No laws are in place to preclude livestock from grazing in riparian corridors and resting in or along streams and rivers. The majority of the Ozarks region in Missouri and Arkansas is comprised of karst topography (caves, springs, sinkholes, and losing streams) further complicating the containment and transport of potential contaminants. In short, the abundance of waste being generated and lack of adequate treatment facilities or practices for both human and livestock waste poses a significant and ever increasing threat to aquatic ecosystems. The decrease in Ozark hellbender range and population size and the shift in age structure are likely due in part to a variety of historic and ongoing activities. The primary causes of these trends are habitat destruction and modification. Among these are impoundment, channelization, and siltation and water quality degradation from a variety of sources, including industrialization, agricultural runoff, mine waste, and timber harvest. Overutilization of hellbenders for commerce and scientific purposes is also likely contributing to their decline. The regulations targeting these threats, including Clean Water Act and state laws, have not prevented Ozark hellbender declines. Finally, most of the remaining Ozark hellbender populations are small and isolated, making them vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extinctions. Due to the existence of ongoing, high-magnitude threats and the newly documented presence of chytridiomycosis, we are deliberating whether emergency listing is appropriate for the Ozark hellbender and continue to assign an LPN of 3 to this subspecies.

Austin blind salamander (*Eurycea waterlooensis*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Austin blind salamander is known to occur in and around three of the four spring sites that comprise the Barton

Springs complex in the City of Austin, Travis County, Texas.

Primary threats to this species are degradation of water quality and quantity due to expanding urbanization. The Austin blind salamander depends on a constant supply of clean water in the Edwards Aquifer discharging from Barton Springs for its survival. Urbanization dramatically alters the normal hydrologic regime and water quality of an area. Increased impervious cover caused by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged in salamander habitat at Barton Springs and have serious morphological and physiological effects to the salamander. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the Edwards Aquifer can result in reduced springflows that may also have a detrimental impact on the salamander.

The Texas Commission on Environmental Quality adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of state regulations. Grandfathering allows developments to be exempted from any new local or state requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for Barton Springs.

Consequently, development occurring outside these jurisdictions can have negative consequences on water quality and thus have an impact on the species. Despite having the Edwards Rules, as well as other local ordinances, in place, 10 years of trend data continues to show that water quality at Barton Springs is declining. Because of the limited distribution of this species, the magnitude of the threats facing it is high. The threats are imminent because urbanization is ongoing and continues to expand over the Barton Springs Segment of the Edwards Aquifer and water quality continues to degrade. Thus, we retain an LPN of 2 for this species.

Georgetown salamander (*Eurycea naufragia*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Georgetown salamander is known to occur in spring outlets along five tributaries to the San Gabriel River and one cave in the City of Georgetown, Williamson County, Texas. The Georgetown salamander has a very limited distribution and depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival.

Primary threats to this species are degradation of water quality and quantity due to expanding urbanization. Increased impervious cover by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged from spring outlets in salamander habitat and have serious morphological and physiological effects to the species. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased groundwater pumping of the Edwards Aquifer results in reduced springflows that may also have a detrimental impact on the salamander.

The Texas Commission on Environmental Quality adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of State regulations. Grandfathering allows developments to be exempted from any new local or State requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for the Edwards Aquifer. The Texas Commission on Environmental Quality has developed voluntary water quality protection measures for development in the Edwards Aquifer region of Texas; however, it is unknown if these measures will be implemented or if they will be effective in maintaining or improving water quality.

Development occurring outside the Texas Commission on Environmental Quality's jurisdiction can have negative consequences on water quality and thus have an impact on the species. Despite having the Edwards Rules in place, as well as other local ordinances, 10 years of trend data at Barton Springs in Austin, Texas, continues to show that water quality is declining. Because of the limited distribution of the Georgetown salamander, the magnitude of the threats facing it is high. The threats are also imminent because urbanization is ongoing and continues to expand over the Northern Segment of the Edwards Aquifer. Thus, we retain an LPN of 2 for this species.

Salado salamander (*Eurycea chisholmensis*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Salado salamander is historically known to occur in two spring sites, Big Boiling Springs and Robertson Springs, near Salado, Bell County, Texas. Salamanders have not been located at Robertson Springs since 1991.

Primary threats to this species are habitat modification and degradation of water quality and quantity due to expanding urbanization. Many of the spring outlets in the City of Salado have been modified by dam construction. Because Big Boiling Springs is located near Interstate 35 and in the center of the city, increasing traffic and urbanization increase threats of contamination from spills, higher levels of impervious cover, and subsequent impacts to groundwater. Several groundwater contamination incidents have occurred within Salado salamander habitat. The Salado salamander depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival. Pollutants and contaminants that enter the Edwards Aquifer discharge in salamander habitat and have serious morphological and physiological effects to the salamander. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the Edwards Aquifer can result in reduced springflows that may also have a detrimental impact on the salamander.

Controls of nonpoint source pollution in the watershed are implemented through the Edwards Rules (water quality protection measures for the

recharge and contributing zones of the Edwards Aquifer) adopted by the Texas Commission on Environmental Quality in 1995 and 1997. Although implementation of the Edwards Rules in other areas of the Northern Segment of the Edwards Aquifer may have the potential to affect conditions at spring sites occupied by the Salado salamander, the jurisdiction of Texas Commission on Environmental Quality does not extend into Bell County. For this reason, compliance with the Edwards Rules is not required in this part of the Edwards Aquifer. There are no other local or regional water protection measures that have been put in place for areas that feed the springs known to be occupied by the Salado salamander. Because of the limited distribution of this species, the magnitude of the threats facing it is high. The threats are also imminent because urbanization is ongoing and contamination events are occurring near spring sites known to support Salado salamanders. Thus, we retain an LPN of 2 for this species.

Yosemite toad (*Bufo canorus*)—The following summary is based on information contained in our files and the petition we received on April 3, 2000. See also our 12-month petition finding published on December 10, 2002 (67 FR 75834). Yosemite toads are moderately sized toads with females having black spots, edged with white or cream, that are set against a grey, tan or brown background. Males have a nearly uniform coloration of yellow-green to olive drab to greenish brown. Yosemite toads are most likely to be found in areas with thick meadow vegetation or patches of low willows near or in water, and use rodent burrows for overwintering and temporary refuge during the summer. Breeding habitat includes the edges of wet meadows, slow flowing streams, shallow ponds and shallow areas of lakes. The historic range of Yosemite toads in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass (Alpine County) to south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County). The historic elevational range of Yosemite toads is 1,460 to 3,630 m (4,790 to 11,910 ft).

The threats currently facing the Yosemite toad include cattle grazing, timber harvesting, recreation, disease, and climate change. Inappropriate grazing has shown to cause loss of vegetative cover and destruction of peat layers in meadows, which lowers the groundwater table and summer flows. This may increase the stranding and mortality of tadpoles, or make these areas completely unsuitable for Yosemite toads. Grazing can also degrade or destroy moist upland areas used as non-breeding habitat by Yosemite toads and collapse rodent burrows used by Yosemite toads as cover and hibernation sites. Timber harvesting and associated road development could severely alter the terrestrial environment and result in the reduction and occasional extirpation of amphibian populations in the Sierra Nevada. These habitat gaps may act as dispersal barriers and contribute to the fragmentation of Yosemite toad habitat and populations. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact soil in riparian habitat, which increases erosion, displaces vegetation, and can lower the water table. Trampling or the collapsing of rodent burrows by recreational users, pets, and vehicles could lead to direct mortality of all life stages of the Yosemite toad and disrupt their behavior. Various diseases have been confirmed in Yosemite toads. Mass die-offs of amphibians have been attributed to: Chytrid fungal infections of metamorphs and adults; *Saprolegnia* fungal infections of eggs; iridovirus infection of larvae, metamorphs, or adults; and bacterial infections. Yosemite toads probably are exposed to a variety of pesticides and other chemicals throughout their range. Environmental contaminants could negatively affect the species by causing direct mortality; suppressing the immune system; disrupting breeding behavior, fertilization, growth or development of young; and disrupting the ability to avoid predation. We retained an LPN of 11 for the Yosemite toad since the threats are nonimminent and moderate to low in magnitude.

Black Warrior waterdog (*Necturus alabamensis*)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Fishes

Headwater chub (*Gila nigra*)—The following summary is based on information contained in our files and the 12-month finding on a petition to list the species we published May 3, 2006 (71 FR 26007). The range of the headwater chub has been reduced by approximately 50 to 60 percent. Approximately 16 streams (125 miles (200 kilometers) of stream) are thought to be occupied out of 19 streams (312 miles (500 kilometers) of stream) formerly occupied in the Gila River Basin in Arizona and New Mexico. Remaining populations are fragmented and isolated and threatened by a combination of factors.

Headwater chub are threatened by introductions of nonnative fish that prey on them and/or compete with them for food. These nonnative fish are difficult to eliminate and, therefore, pose an on-going threat. Habitat destruction and modification has occurred and continues to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed in relation to habitat destruction or modification. The fragmented nature and rarity of existing populations makes them vulnerable to other natural or manmade factors, such as drought and wildfire.

The Arizona Game and Fish Department has created the Arizona Statewide Conservation Agreement for Roundtail Chub (*G. robusta*), Headwater Chub, Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*), which is in the process of being finalized. The New Mexico Department of Game and Fish recently listed the headwater chub as endangered and created a recovery plan for the species, Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan, which was approved by the New Mexico State Game Commission on November 16, 2006. Both the Arizona Agreement and the New Mexico Recovery Plan recommend preservation and enhancement of extant populations and restoration of historical headwater chub populations. The recovery and conservation actions prescribed by Arizona and New Mexico plans, which we believe will reduce and remove threats to this species, will require further discussions and authorizations before they can be implemented. However, due to the ongoing high magnitude threats, including loss of habitat, degradation of remaining habitat, and others (e.g., nonnative species, drought, and fire), we maintain the current LPN of 2 for this species.

Arkansas darter (*Etheostoma cragini*)—The following summary is based on information from our files. No

new information was provided in the petition we received on May 11, 2004. The Arkansas darter is a small fish in the perch family native to portions of the Arkansas River basin. The species' range includes sites in extreme northwestern Arkansas, southwestern Missouri, and northeastern Oklahoma, within the Neosho River watershed. It also occurs in a number of watersheds and isolated streams in eastern Colorado, south-central and southwestern Kansas, and the Cimarron watershed in northwest Oklahoma. The species is most often found in small spring fed streams with sand substrate and aquatic vegetation. It appears stable at most sites where spring flows persist. It has declined in areas where spring flows have decreased or been eliminated. We estimate that currently there are approximately 145 occurrences of the Arkansas darter distributed across the five States; it was found at 29 of 67 sites sampled in 2005–2006. Major threats to the species include stream dewatering resulting from groundwater pumping in the western portion of the species' range, and development pressures in portions of its eastern range. Spills and runoff from confined animal feeding operations also potentially threaten the species range-wide. We are retaining an LPN of 11 for the Arkansas darter until we can assess more current information.

Cumberland darter (*Etheostoma susanae*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Although the Cumberland darter was once recorded as abundant, it is now considered to be rare and extremely restricted in range known from only 18 locations in streams in the upper Cumberland River system, above Cumberland Falls, in Kentucky and Tennessee. The species inhabits shallow water in pools and runs of headwater streams with stable sand, silt, or sand-covered bedrock substrata.

The primary threat to the Cumberland darter is the siltation of instream habitats caused by coal mining activities, silvicultural practices, road construction, and urban development. The small size and range of Cumberland darter populations also make them much more susceptible to extirpation from single catastrophic events (such as toxic chemical spills) and reduces their ability to recover from smaller impacts to their habitat or populations. All surviving populations of the Cumberland darter are restricted to short stream reaches, with the majority believed to be restricted to less than one mile of stream. These occurrences are thought to form six population clusters, which are isolated from one another by poor quality habitat, impoundments, or natural barriers. Specific information on the threats to the current distribution of the Cumberland darter was initiated in May 2006 by the Kentucky Department of Fish and Wildlife Resources and additional sampling was completed in spring 2007 at approximately 10 to 15 sites in Kentucky and Tennessee. Collectively, these factors are serious and significant impediments to the survival of the Cumberland darter; thus these threats are high in magnitude. Federal and state water quality laws have reduced water quality threats to some degree, and non-point pollution threats and modification of reach geomorphology and hydrology are cumulative and gradual. Therefore, these factors are nonimminent. Consequently, we have assigned the Cumberland darter a listing priority of 5, reflecting a threat magnitude and immediacy of high and nonimminent, respectively.

Pearl darter (*Percina aurora*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Little is known about the specific habitat requirements or natural history of the Pearl darter. Pearl darters have been collected from a variety of river/stream attributes, mainly over gravel bottom substrate. This species is historically known only from localized sites within the Pascagoula and Pearl River drainages in two states. Currently, the Pearl darter is considered extirpated from the Pearl River drainage and rare in the Pascagoula River drainage. Since 1983, the range of the Pearl darter has decreased by 55 percent.

Pearl darters are vulnerable to the cumulative impacts of a variety of non-point pollution sources, such as sedimentation and chemicals, and also to more localized and concentrated pollution events. The steady yet gradual change in river and tributary geomorphology and hydrology over time is believed to have an impact on this species. The magnitude of threat to this species is high due to their limited and disjunct populations and threat due to sedimentation. However, the immediacy of the threat is nonimminent since no known projects are planned that would have a direct impact on the species, and the decline of water quality is slow and gradual. In addition, efforts are underway to improve habitat by reducing these threats and to increase and augment the numbers of Pearl darters by husbandry. Therefore, we assign this species an LPN of 5.

Rush darter (*Etheostoma phytophilum*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Rush Darter is endemic to upland portions of the Black Warrior River system in Alabama where it occurs in shallow headwater streams. This species is uncommon and sporadic within its range, as it favors shallow, flowing water in spring runs and spring-associated streams with emergent vegetation. Only three disjunct populations are known: One in the Clear Creek system in Winston County, one in spring-fed tributaries of Turkey Creek in Jefferson County; and one population in Little Cove Creek (Cove Springs) in Etowah County. The Jefferson County population (Turkey Creek), which is located in a large metropolitan area, is threatened by urbanization and commercialization of its habitat. Siltation from bridge, road, and sewer line construction has been recently documented within the Turkey Creek watershed by academic researchers and Service biologists.

The major threat to the Winston County population of rush darters is erosion of Mill Creek, Doe and Wildcat Branch, and the cumulative increase of sediments caused from gravel roads and roadside ditches. Within the past year, biologists have observed increased erosion along roads adjacent to Doe and wildcat Branches which resulted in increased siltation within those streams. Increases in urbanization, road maintenance and silviculture practices contribute to increased sedimentation in the watershed. The major threat to the Cove Springs population is contamination of the water with chlorine. Efforts are underway to improve habitat and water quality; however, at this time all populations are being negatively affected by declining water quality. The magnitude of threat is high due to the limited number of populations, and the threat is imminent because water quality is currently declining for all populations. Thus, we assigned an LPN of 2 to this species.

Yellowcheek darter (*Etheostoma moorei*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The yellowcheek darter is endemic to four headwater tributaries of the Little Red River. It is vulnerable to alterations in physical habitat characteristics such as the impoundment of Greers Ferry Reservoir, channel maintenance in the Archey Fork, increased sedimentation from eroding stream banks and poor riparian management, and illegal gravel

mining. Factors affecting the remaining populations include loss of suitable breeding habitat, habitat and water quality degradation, population isolation, and severe population declines exacerbated by stochastic drought conditions. A 2004–2005 threats assessment by Service personnel documented occurrences of the aforementioned activities and found 52 sites on the Middle Fork, 28 sites on the South Fork, eight sites on Archey Fork, and one site in the Turkey/Beech/Devils Fork system that are potential contributors to the decline of the species. Since the threats assessment was completed, natural gas exploration and development in the Fayetteville Shale formation in north central Arkansas has also become a primary threat in all watersheds and is not addressed by the conservation agreements in place or by any regulatory mechanism. The Middle Fork was listed as an impaired waterbody by the Arkansas Department of Environmental Quality in 2004 due to excessive bacteria and low dissolved oxygen.

Recent studies have documented significant declines in the numbers (60,000 in 1981; 10,300 in 2000) of this fish in the remaining populations and further range restriction within the tributaries (130.4 to 65.0 stream km). As a result, yellowcheek darter numbers had declined over a 20 year period by 83 percent in both the Middle Fork and South Fork, and 60 percent in the Archey Fork during a 2000 status survey. No yellowcheek darters have been found in the Turkey Fork between 1999 and 2005; the species has apparently been extirpated in that reach. Due to imminent threats of a high magnitude that are not currently targeted by conservation actions, we assigned this species an LPN of 2.

Chucky madtom (*Noturus crypticus*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Chucky madtom is a rare catfish known from only 15 specimens collected from two Tennessee streams. A lone individual was collected in 1940 from Dunn Creek (a Little Pigeon River tributary) in Sevier County and 14 specimens have been encountered since 1991 in Little Chucky Creek (a Nolichucky River tributary) in Greene County. Only 3 specimens have been encountered since 1994 from two riffle areas in a short reach of Little Chucky Creek. All Little Chucky Creek specimens have been collected from stream runs with slow to moderate current over pea gravel, cobble, or slab-rock substrates.

Threats to the chucky madtom include both extrinsic and intrinsic factors. Extrinsic factors include potential degradation of water quality and breeding and sheltering habitat due primarily to agricultural land use practices and secondarily to urban and rural development in the watersheds of Little Chucky and Dunn creeks. The Service believes that intrinsic factors including the potential demographic effects of inbreeding, limited species distribution, presumed low number of individuals, and presumed low fecundity and short life span characteristic of closely related madtom species pose imminent threats to the chucky madtom in its only known extant and historic locations. Therefore, we assigned the chucky madtom an LPN of 2.

Grotto sculpin (*Cottus* sp., sp. nov.)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Grotto sculpin, a small fish, is restricted to two karst areas (limestone regions characterized by sink holes, abrupt ridges, caves, and underground streams), the Central Perryville Karst and Mystery-Rimstone Karst in Perry County, southeast Missouri. Grotto sculpins have been documented in only 5 caves. The current overall range of the grotto sculpin has been estimated to encompass approximately 260 square kilometers (100 square miles).

The small population size and endemism of the grotto sculpin make it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance changes to the environment. The species' karst habitat is located down-gradient of the city of Perryville, Missouri, which poses a potential threat if contaminants from this urban area enter cave streams occupied by grotto sculpins. Various agricultural chemicals, such as ammonia, nitrite/nitrate, chloride, and potassium have been detected at levels high enough to be detrimental to aquatic life within the Perryville Karst area. More than half of the sinkholes in Perry County contain anthropogenic refuse, ranging from household cleansers and sewage to used pesticide and herbicide containers. As a result, potential water contamination from various sources of point and non-point pollution poses a significant threat to the grotto sculpin. Of the 5 cave systems documented to have grotto sculpins, populations in one cave system were likely eliminated, presumably as the result of point-source pollution. When the cave was searched in the spring of 2000, a mass mortality of grotto sculpin was noted, and subsequent visits to the cave have failed to document a single live grotto sculpin. Thus, the species appears to have suffered a 20 percent decrease in the number of populations from the single event. Predatory fish such as common carp, fat-head minnow, yellow bullhead, green sunfish, bluegill, and channel catfish occur in all of the caves occupied by grotto sculpin. These potential predators may escape surface farm ponds that unexpectedly drain through sinkholes into the underground cave systems and enter grotto sculpin habitat. No regulatory mechanisms are in place that would provide protection to the grotto sculpin. Current threats to the habitat of the grotto sculpin may exacerbate potential problems associated with its low population numbers and increase the likelihood of extinction. Due to the high magnitude of ongoing, and thus imminent, threats we assigned this species an LPN of 2.

Sharpnose shiner (*Notropis oxyrhynchus*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries within the watershed. It has also been found in the Wichita River (within the Red River Basin) where it may have once naturally occurred but has since been extirpated. Current information indicates that the population within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable, while the population within the Middle and Lower Brazos River Basins may only exist in remnant populations in areas of suitable habitat, which may no longer be viable, representing a reduction of approximately 68 percent of its historical range.

The most significant threat to the existence of the sharpnose shiner is potential reservoir development within its current range. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. State law does not provide protection for the sharpnose shiner. The magnitude of threat is considered high since the major threat of reservoir

development within the species current range may render its remaining habitat unsuitable. The immediacy of threat is non-imminent because major reservoir projects are not likely to occur in the near future and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assign an LPN of 5 to this species.

Smalleye shiner (*Notropis buccula*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. The population of smalleye shiners within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable. However, the shiner has not been collected since 1976 downstream from the reservoir, and may be extirpated from this area, representing a reduction of approximately 54 percent of its historical range.

The most significant threat to the existence of the smalleye shiner is potential reservoir development within its current range. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the smalleye shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. State law does not provide protection for the smalleye shiner. The magnitude of threat is considered high since the major threat of reservoir development within the current range of the species may render its remaining habitat unsuitable. The immediacy of threat is considered non-imminent because major reservoir projects are not likely to occur in the near future and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assign an LPN of 5 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The range of the Zuni bluehead sucker has been reduced by over 90 percent. The Zuni bluehead sucker currently occupies 9 river miles in 3 areas of New Mexico, and potentially occurs in 27 miles in the Kinlichee drainage of Arizona. However, the number of occupied miles in Arizona is unknown and the genetic composition of these fish is still under investigation. Zuni bluehead sucker range reduction and fragmentation is caused by discontinuous surface water flow, separation of inhabited reaches by reservoirs, and habitat degradation from fine sediment deposition. The principal uses of surface and ground water within the Zuni River watershed are human consumption, livestock, and irrigation. Diverting water for agricultural use is the primary purpose of at least five impoundments, and several other reservoirs act as flood-control structures. Degradation of the upper watershed has led to increased sedimentation, and many of the reservoirs are now only shallow, eutrophic (low oxygen) ponds or wetlands with little or no storage capacity. The impoundments have also changed the downstream channel morphology and substrate composition of streams. Another major impact to populations of Zuni bluehead sucker was the application of fish toxicants through at least two dozen treatments in the Nutria and Pescado rivers between 1960 and 1975. Large numbers of Zuni bluehead suckers were killed during these treatments.

For several years, the New Mexico Department of Game and Fish has been the lead agency to develop a conservation plan for Zuni bluehead sucker. A study funded through section 6 of the Act was initiated in 2000 and has continued annually. The grant included funding for development and implementation of a Zuni Bluehead Sucker Conservation Plan and the acquisition of additional information on distribution, life history, and species associations. The Zuni Bluehead Sucker Recovery Plan was approved by the New Mexico State Game Commission during a State Game Commission meeting on December 15, 2004. The Recovery Plan recommends preservation and enhancement of extant populations and restoration of historical Zuni bluehead sucker populations. The recovery actions prescribed by the State Recovery Plan that we believe will reduce and remove threats to this subspecies will require further discussions and authorizations before they can be implemented. Because of the ongoing threats of high magnitude, including loss of habitat (historical and current from beaver activity), degradation of remaining habitat, drought, and fire, we maintain the current LPN of 3 for this subspecies.

Clams

Texas hornshell (*Popenaias popei*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Texas hornshell is a freshwater mussel found in the Black River of New Mexico and one confirmed locality in the mainstem Rio Grande of Texas and Mexico. The primary threats are habitat alterations such as stream bank channelization, impoundments, and diversions for agriculture and flood control; contamination of water by the oil and gas industry; alterations in the natural riverine hydrology; and increased sedimentation from prolonged overgrazing and loss of native vegetation. Riverine habitats in both the Black River and the Rio Grande are under constant threats from these adverse changes. The magnitude of threats is high because of the existence of only one confirmed location in New Mexico and Texas each, which makes this species highly vulnerable to extinction. The threats are imminent because past alterations to riverine habitats have resulted in the much reduced distribution of this species and demands for water from the Rio Grande continue to increase and make additional habitat degradation likely. Thus, we maintain the LPN of 2 for this species.

Fluted kidneyshell (*Ptychobranchus subtentum*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004.

Neosho mucket (*Lampsilis rafinesqueana*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has been extirpated from approximately 62 percent (835 river miles) of its range, most of which has occurred in Kansas and Oklahoma. The Neosho mucket survives in four river drainages; however, only two of these, the Spring and Illinois Rivers, currently support relatively large populations.

Significant portions of the historic range have been inundated by the construction of at least 11 dams. Channel instability downstream of these dams has further reduced suitable habitat and mussel distribution. Range restriction and population declines have occurred due to habitat degradation attributed to impoundments, mining,

sedimentation, and agricultural pollutants. Rapid development and urbanization in the Illinois River watershed will likely continue to increase sedimentation and eutrophication to this river but populations are currently stable in this river. The remaining extant populations are vulnerable to random catastrophic events (e.g., flood scour, drought, toxic spills), land use changes within the limited range, and genetic isolation and the deleterious effects of inbreeding. These threats have led to the species being intrinsically vulnerable to extirpation. Although State regulations limit harvest of this species, there is little protection for habitat. The threats are high in magnitude as they can negatively affect the species throughout its range and result in mortality and/or reduced reproductive output. While some of the threats are ongoing and thus, imminent, others are nonimminent, but on balance, the threats are nonimminent. Thus, we assigned an LPN of 5 to this species.

Alabama pearlshell (*Margaritifera marrianae*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Alabama pearlshell (*Margaritifera marrianae*) inhabits shallow riffles and pool margins of small creeks and streams of southwest Alabama. Only three populations of Alabama pearlshell have been confirmed to survive during the past 15 years. A comprehensive survey is planned by the Alabama Department of Conservation and Natural Resources in 2007. One of the three populations has declined significantly over the past few years, apparently due to increased sedimentation at this location and possibly other forms of non-point source (NPS) pollution. The other two populations also appear to be declining. The Alabama pearlshell has been assigned a listing priority of 2 because the NPS pollution is ongoing, and therefore imminent, and the vulnerability of small stream habitat to continuing NPS pollution, combined with the fewer numbers of live mussels in the three known populations, means that the NPS pollution poses a high-magnitude threat to this species.

Slabside pearlymussel (*Lexingtonia dolabelloides*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The slabside pearlymussel is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to its decline. This species has been extirpated from numerous regional streams and is no longer found in the Commonwealth of Kentucky. The slabside pearlymussel was historically known from at least 32 streams but is currently restricted to no more than 10 isolated stream segments. Current status information for most of the 10 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks Holston River, Paint Rock River, and Duck River in the past several years. Based on recent information, the overall population of the slabside pearlymussel is declining rangewide. Of the five streams in which the species remains in good numbers and is clearly viable (e.g., Clinch, North and Middle Forks Holston, Paint Rock, Duck Rivers), the Middle and upper North Fork Holston Rivers have undergone drastic recent declines, while the Clinch population has been in a longer-term decline. Most of the remaining five populations (e.g., Powell River, Big Moccasin Creek, Hiwassee River, Elk River, Bear Creek) have doubtful viability and several if not all of them may be on the verge of extirpation. Since most of the populations of slabside pearlymussel are declining and face potential threats from impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural run-off, nutrient enrichment, and coal processing pollution, the threats are high in magnitude. However, there is no specific information regarding the timing of these threats, so we do not consider them to be imminent. Thus, we continue to assign an LPN of 5 to this mussel.

Georgia pigtoe (*Pleurobema hanleyanum*)—We have not updated our candidate assessment for this species as we are currently developing a proposed listing rule.

Altamaha spinymussel (*Elliptio spinosa*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Altamaha spinymussel is a freshwater mussel endemic to the Altamaha River drainage of southeastern Georgia. The historical range of the Altamaha spinymussel was restricted to the Coastal Plain portion of the Altamaha River and the lower portions of its three major tributaries, the Ohoopee, Ocmulgee, and Oconee Rivers. The Altamaha spinymussel is associated with stable, coarse to fine sandy sediments of sandbars and sloughs and appears to be restricted to swiftly flowing water. As the name implies, the shells of these animals are adorned with one to five prominent spines that reach lengths from 10 to 25 mm (0.39 to 0.98 in). The species appears to be extirpated from the Ohoopee and Oconee Rivers, and its numbers are greatly reduced in the Ocmulgee and Altamaha Rivers.

Altamaha spinymussels face severe habitat degradation from a number of sources. Primary among these are threats from sedimentation and contaminants within the rivers that the Altamaha spinymussel inhabits. A new threat of deadhead logging has recently emerged. These threats to the Altamaha spinymussel are further compounded by its limited distribution and the low population size identified in recent survey efforts. Efforts to identify the host fish and expand our understanding of the spinymussels life cycle have not yet produced results. Since the threats are ongoing (i.e., imminent) and severely affect this species throughout its range (i.e., high in magnitude), we continue to assign an LPN of 2 to this species.

Snails

Ogden mountainsnail (*Oreohelix peripherica wasatchensis*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Ogden mountain snail is known from a single population near the mouth of Ogden Canyon, Weber County, Utah. The total occupied habitat is an area approximating 100 meters (328 ft) wide by 1 kilometer (0.5 miles) long. The restricted range of this snail, the proximity to an expanding residential area, and impacts from relatively heavy recreational use, makes it vulnerable to extirpation from stochastic or human-caused events. Threats to the colony have not changed or increased substantially over the past year. Recent molecular phylogenic studies are expected to clarify the level of uniqueness of this taxon. The ongoing (i.e. imminent) threats are moderately affecting the species. Therefore, we retained an LPN of 9 for this subspecies.

Fat-whorled (Bonneville) pondsnail (*Stagnicola bonnevillensis*)—The following summary is based on information contained in our files. No new information was provided in the

petition we received on May 11, 2004. The fat-whorled pondsnail, also known as the Bonneville pondsnail, occupies four spring pools north of the Great Salt Lake in Box Elder County, Utah. While the number of individuals is unknown, the total known occupied habitat is less than one hectare. Previous and ongoing threats include chemical contamination of the groundwater. Significant actions are underway to remediate this threat, including implementation of a Corrective Action Plan to characterize and remediate groundwater contamination, implementation of a site management plan, and development of a groundwater model and risk assessment. These efforts have not been underway for a sufficient period to reduce the threat from contamination. While contamination continues to occur, and therefore, the threat is imminent, the levels of contamination are such that it affects the species over a longer timeframe, so the threat is moderate in magnitude. Therefore, we retained an LPN of 8 for this species.

Interrupted rocksnail (*Leptoxis foremani* (= *downei*)—We have not updated our candidate assessment as we are currently developing a proposed listing rule for this species.

Sisi snail (*Ostodes strigatus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sisi snail is a ground-dwelling species in the Potaridae family and is endemic to American Samoa. The species is now known from a single population on the island of Tutuila, American Samoa.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. The decline of the sisi in American Samoa has resulted, in part, from loss of habitat to forestry and agriculture and loss of forest structure to hurricanes and alien weeds that establish after these storms. All live sisi snails have been found in the leaf litter beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historic conditions, loss of forest canopy to storms did not pose a great threat to the long term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by expanding agriculture. Agricultural plots on Tutuila have spread from low elevation up to middle and some high elevations, greatly reducing the forest area and thus reducing the resilience of native forests and its populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining canopy forest. In an effort to eradicate the giant African snail (*Achatina fulica*), the alien rosy carnivore snail (*Euglandia rosea*) was introduced in 1980. The rosy carnivore snail has spread throughout the main island of Tutuila. Numerous studies show that the rosy carnivore snail feeds on endemic island snails including the sisi, and is a major agent in their declines and extirpations. At present, the major threat to long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. These threats are ongoing and are therefore imminent. Since the threats occur throughout the entire range of the species and have a significant effect on the survival of the snails, they are of a high magnitude. Therefore we assigned this species an LPN of 2.

Diamond Y Spring snail (*Pseudotryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Diamond Y Spring snail and Gonzales springsnail are small aquatic snails endemic to Diamond Y Spring in Pecos County, Texas. The spring and its outflow channel are owned and managed by The Nature Conservancy. These snails are primarily threatened with habitat loss due to springflow declines from drought and from pumping of groundwater. Additional threats include water contamination from accidental releases of petroleum products, as their habitat is in an active oil and gas field. Also, a nonnative aquatic snail (*Melanoides* sp.) was recently introduced into the native snails' habitat and may compete with endemic snails for space and resources. The magnitude of threats is high because limited distribution of these narrow endemics makes any impact from increasing threats (e.g., loss of springflow, contaminants, and nonnative species) likely to result in the extinction of the species. These species occur in one location in an arid region currently plagued by drought and ongoing aquifer withdrawals, making the threat to spring flow imminent. Thus, we maintain the LPN of 2 for both species.

Fragile tree snail (*Samoana fragilis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the fragile tree snail is a member of the Partulidae family of snails and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known from 4 populations on Guam and a single population on Rota. This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flatworms. Large numbers of deer (*Cervus marianuns*) (Guam and Rota), pigs (*Sus scrofra*) (Guam), water buffalo (*Bubalus bubalis*) (Guam), and cattle (*Bos taurus*) (Rota), directly alter the understory plant community and overall forest microclimate making it unsuitable for snails. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the fragile tree snail. Field observations have established that the rosy carnivore snail and the Manokwar flatworm will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, they are high in magnitude. The threats are also ongoing and thus, are imminent. Therefore, we assigned this species an LPN of 2.

Guam tree snail (*Partula radiolata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Guam tree snail is a member of the Partulidae family of snails and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known from 22 populations on Guam.

This species is primarily threatened by predation from nonnative predatory snails and flatworms. In addition, the species is also threatened by habitat loss and degradation. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the Guam tree

snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. The Manokwar flatworm has also contributed to the decline of native tree snails, in part due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. On Guam, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) by the U.S. Military. Tangantangan grows as a single species stand with no substantial understory. The microclimatic condition is dry with little accumulation of leaf litter humus and is particularly unsuitable as Guam tree snail habitat. In addition, native forest cannot reestablish and grow where this alien weed has become established. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, they are high in magnitude. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Humped tree snail (*Partula gibba*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the humped tree snail is a member of the Partulidae family of snails, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguiguan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Most recent surveys revealed a total of 14 populations on the islands of Guam, Rota, Aguiguan, Sarigan, Saipan, Alamagan, and Pagan. Although still the most widely distributed tree snail endemic in the Mariana Islands, remaining population sizes are often small.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flat worms. Throughout the Mariana Islands, feral ungulates (pigs (*Sus scrofa*), Philippine deer (*Cervus mariannus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and goats (*Capra hircus*)) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for the humped tree snail. Currently, populations of feral ungulates are found on the islands of Guam (deer, pigs, and water buffalo), Rota (deer and cattle), Aguiguan (goats), Saipan (deer, pigs, and cattle), Alamagan (goats, pigs, and cattle), and Pagan (cattle, goats, and pigs). Goats were eradicated from Sarigan in 1998 and the humped tree snail has increased in abundance on that island, likely in response to the removal of all the goats. However, the population of humped tree snails on Anatahan is likely extirpated due to the massive volcanic explosions of the island beginning in 2003 and still continuing, and the resulting loss of up to 95 percent of the vegetation on the island. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the humped tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. The Manokwar flatworm has also contributed to the decline of native tree snails, in part due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. The magnitude of threats is high because they cause significant population declines to the humped tree snail rangewide. These threats are ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Lanai tree snail (*Partulina semicarinata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, *P. semicarinata* is a member of the Achatinellidae family of snails. Endemic to the island of Lanai, the species is currently known from 3 populations totaling 29 individuals. This species is highly threatened throughout its limited range by habitat loss and modification and by predation from rats. No efforts are being undertaken to remove rats in areas where *P. semicarinata* occur. The threat from this predator is expected to continue or increase unless the rats are actively controlled or eradicated. Habitat loss also continues as nonnative ungulates trample and browse native vegetation required by *P. semicarinata*. Although the snails are in an area to be fenced, until the fence is completed and the ungulates have been removed, the habitat will continue to be degraded. The small number of individuals and the small number of populations make this species very susceptible to the negative effects of stochastic events such as hurricanes and storms. There is a population in captivity that is protected from the effects of unexpected droughts, though the effects of severe storms may still affect this population as evidenced by the loss of snails when a severe flood interrupted the power supply to the Hawaii Endangered Snail Captive Propagation Lab and temperatures increased within the environmental chambers containing the snails. In addition, these snails are likely subjected to the same concerns of reproductive vigor and loss of genetic variability. The magnitude of threats is high because they cause significant population declines to *P. semicarinata* rangewide. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Lanai tree snail (*Partulina variabilis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, *P. variabilis* is a member of the Achatinellidae family of snails. Endemic to the island of Lanai, the species is currently known from 12 populations totaling 90 individuals. This species is highly threatened throughout its limited range by habitat loss and modification and by predation from rats. The threat from this predator is expected to continue or increase unless the rats are actively controlled or eradicated. Habitat loss also continues as nonnative ungulates trample and browse native vegetation required by *P. variabilis*. Although the snails are in an area to be fenced, until the fence is constructed and the ungulates have been removed, the habitat will continue to be degraded. The small number of individuals and the small number of populations make this species very susceptible to the negative effects of stochastic events such as hurricanes and storms. There is a population in captivity that is protected from the effects of unexpected droughts, though the effects of severe storms may still affect this population as evidenced by the loss of snails when a severe flood interrupted the power supply to the University and temperatures increased within the environmental chambers containing the snails. In addition, these

snails are likely subjected to the same concerns of reproductive vigor and loss of genetic variability as the wild population. The magnitude of threats is high because they result in direct mortality or significant population declines to *P. variabilis* rangewide. The threats are ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Langford's tree snail (*Partula langfordi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, Langford's tree snail is a member of the Partulidae family of snails and is known from one population on the island of Aguiguan. This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. In the 1930s, the island of Aguiguan was mostly cleared of native forest to support sugar cane and pineapple production. The abandoned fields and airstrip are now overgrown with alien weeds. The remaining native forest understory has greatly suffered from large and uncontrolled populations of alien goats and the invasion of weeds. Goats (*Capra hircus*) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for Langford's tree snail. Predation by the alien rosy carnivore snail (*Euglandina rosea*) is also a serious threat to the survival of Langford's tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. Predation on native partulid tree snails by the terrestrial Manokwar flatworm (*Platydemus manokwari*) is also a threat to the long-term survival of these snails. The Manokwar flatworm has contributed to the decline of native tree snails, due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. All of the threats are occurring rangewide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because they result in direct mortality or significant population declines to Langford's tree snail rangewide. These threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Newcomb's tree snail (*Newcombia cumingi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The species is endemic to the island of Maui, where it is currently known from a single remaining population. The greatest threats to Newcomb's tree snail are the loss of the only known remaining population due to predation from rats and the rosy carnivore snail (*Euglandina rosea*). There are no efforts in place to reduce the threat from the rosy carnivore snail although discussions are underway with the private landowner to construct a rat proof fence in the area occupied by this snail. Our attempts to raise this species in a captive propagation facility have been unsuccessful. The magnitude of threats is high because they occur within the last known population of the species and result in direct mortality or significant population declines. These threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatumi*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Phantom Cave snail and Phantom springsnail are small aquatic snails that occur in three spring outflows in the Toyah Basin in Reeves and Jeff Davis counties, Texas. The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. Although much of the land immediately surrounding their habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Texas Parks and Wildlife Department, the water needed to maintain their habitat has declined due to a reduction in spring flows, possibly as a result of private groundwater pumping in areas beyond that controlled by these landowners. As an example, Phantom Lake Spring, one of the sites of occurrence, has already ceased flowing and aquatic habitat is supported only by a pumping system. The magnitude of the threats is high because spring flow loss would result in complete habitat destruction and permanent elimination of all populations of the species. The immediacy of the threats is imminent, as evidenced by the drastic decline in spring flow at Phantom Lake Spring that is happening now and may extirpate these populations in the near future. Declining spring flows in San Solomon Spring are also becoming evident and will affect that spring site as well within the foreseeable future. Thus, we maintain the LPN of 2 for both species.

Tutuila tree snail (*Eua zebrina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail is a member of the Partulidae family of snails and is endemic to American Samoa. The species is known from 32 populations on the islands of Tutuila, Nuusetoga, and Ofu.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and rats. All live Tutuila tree snails were found on understory vegetation beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historical conditions, loss of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by an expanding agricultural footprint. Agricultural plots on Tutuila have spread from low elevation up to middle and some high elevations, greatly reducing the forest area and thus reducing the resilience of native forests and its populations of native snails. In an effort to eradicate the giant African snail (Achatina fulica), the rosy carnivore snail (*Euglandina rosea*) was introduced in 1980 and has spread throughout the main island of Tutuila. Numerous studies show that the rosy carnivore snail feeds on endemic island snails, including the Tutuila snail, and is a major agent in their declines and extirpations. Rats (*Rattus* spp) have also been shown to devastate snail populations and rat-chewed snail shells have been found at sites where the Tutuila snail occurs. At present, the major threat to the long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails and rats. The magnitude of threats is high because

they result in direct mortality or significant population declines to the Tutuila tree snail rangewide. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Chupadera springsnail (*Pyrgulopsis chupaderae*)—The following summary is based on information contained in our files and the petition we received on November 20, 1985. See also our 12-month petition finding published on October 4, 1988 (53 FR 38969). This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two springs that flow through gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation from livestock grazing represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring and the availability of perennial, oxygenated flowing water within the species' thermal range. Due to several factors, including the extremely localized distribution of the snail, its occurrence only on private property, the lack of regulatory protection of its habitat, and the inability of land managers to participate in its management, the threats can cause significant population declines of the Chupadera springsnail. Therefore, the magnitude of the threats to this species is high. There is an imminent threat to this species because the threats are ongoing (e.g., grazing of cattle, water withdrawal, and fire). Due to the continuing high magnitude and imminence of threats to this species, we retain an LPN of 2 for this species.

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pyrgulopsis notidicola* is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The type locality, and the only known location of the species, occurs in a stretch of thermal [between 45° Celsius (C) (113° Fahrenheit (F)) and 32° C (90° F)] aquatic habitat that is approximately 300 m (984 ft) long and 2 m (6.7 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (i.e. impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high. The present or threatened destruction, modification, or curtailment of its habitat or range by recreational bathers in the thermal waters is the greatest threat to the species. The small size of their habitat and their limited range makes them highly susceptible to any factors that negatively affect their habitat. A Recreational Management Plan was established in 2004 and several actions have been implemented, but no monitoring has taken place to evaluate the effectiveness of these actions on removing the threats to the species. Based on imminent threats of high magnitude, we assigned an LPN of 2 for this species.

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files and the petition we received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats. Sites on both private and Federal lands are subject to levels of recreational use and livestock grazing that negatively affect this species, thus placing the long-term survival of the Gila springsnail at risk. Natural events such as drought, forest fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices represent the primary threats to the Gila springsnail. Fire suppression activities and fire retardant chemicals have potentially deleterious effects on this species. Because several of the springs occur on U.S. Forest Service land, management options for the protection of the snail should be possible. However, randomly occurring events, especially fire and drought, could have a major impact on the species. Moderate use by recreationalists and livestock is ongoing. If these uses remain at current or lower levels, they will not pose an imminent threat to the species. Of greater concern is drought, which could affect spring discharge and increases the potential for fire. Although the effect global climate change may have on streams and forests of the Southwest is unpredictable, mean annual temperature in New Mexico has increased by 0.6 degrees per decade since 1970. Higher temperatures lead to higher evaporation rates which may reduce the amount of runoff and groundwater recharge. Increased temperatures may also increase the extent of area influenced by drought and fire. Large fires have occurred in the Gila National Forest and subsequent floods and ash flows have severely affected aquatic life in streams. If the drought continues or worsens, the imminence of threats from decreased discharge or fire will increase. Based on these nonimminent threats that are currently of a low magnitude, we retain an LPN of 11 for this species.

Gonzales springsnail (*Tryonia circumstriata*)—See paragraph above under Diamond Y Spring snail (*Pseudotryonia adamantina*).

Huachuca springsnail (*Pyrgulopsis thompsoni*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above is based on information from our files. No new information was provided in the petition we received on May 11, 2004.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The New Mexico springsnail is an aquatic species known from only two separate populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats. Although the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to levels of recreational use and livestock grazing that can negatively affect this species. Moderate use by recreationalists and livestock is ongoing. If these uses remain at the current or lower levels, they will not pose an imminent threat to the species. Of greater concern is drought, which could affect spring discharge and increases the potential for fire. Although the effect global climate change may have on streams and forests of the Southwest is unpredictable, mean annual temperature in New Mexico has increased by 0.6 degrees per decade since 1970. Higher temperatures lead to higher evaporation rates which may reduce the amount of runoff and groundwater recharge. Increased

temperatures may also increase the extent of area influenced by drought and fire. Large fires have occurred in the Gila National Forest and subsequent floods and ash flows have severely affected aquatic life in streams. If the drought continues or worsens, the imminence of threats from decreased discharge and fire will increase. Based on these nonimminent threats of a low magnitude, we retain an LPN of 11 for this springsnail.

Page springsnail (*Pyrgulopsis morrisoni*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information from our files. No new information was provided in the petition received on May 11, 2004.

Three Forks springsnail (*Pyrgulopsis trivialis*)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Three Forks springsnail is an endemic species with distribution limited to the Three Forks Springs and Boneyard Springs spring complexes in the North Fork East Fork Black River Watershed of east-central Arizona. The springsnail was known from free-flowing spring heads, concrete boxed spring heads, spring runs, and spring seepage at these sites. The primary threats include habitat modification from recreational activities, damage from elk wallowing, and predation from nonnative crayfish. The population at Three Forks appears to be nearly extirpated following a fire retardant drop in 2004. The Arizona Game and Fish Department currently maintains an active monitoring program for the Three Forks springsnail in cooperation with the Service and U.S. Forest Service. This program includes population monitoring, habitat sampling, and removal of nonnative predatory crayfish. However, in the absence of a comprehensive management strategy to effectively address the threat from elk, crayfish, and fire suppression in the long-term, the threats are ongoing and therefore, imminent. The magnitude of threats is high, because limited distribution of this narrow endemic makes any impact from the threats likely to result in the extinction of the species. Therefore, we retain an LPN of 2 for the Three Forks springsnail.

Insects

Wekiu bug (*Nysius wekiuicola*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The wekiu bug belongs to the true bug family, Lygaeidae, and is endemic to the island of Hawaii. This species only occurs on the summit of Mauna Kea and feeds upon other insect species which are blown to the summit of this large volcano. The wekiu bug is primarily threatened by the loss of its habitat from astronomy development. In 2004 and early 2005, surveys were conducted that found multiple new locations of the wekiu bug on the Mauna Kea summit. Several of these cinder cones within the Mauna Kea Science Reserve, as well as two other cinder cones located in the State Ice Age Natural Area Reserve, are not currently undergoing development nor is development planned. With the discovery of these new locations, the threats, though ongoing, do not occur across the entire range of the wekiu bug. The immediacy of the threats is imminent in some parts of the wekiu bug's range because ongoing development is occurring. Although the threats are ongoing and therefore imminent in some areas of wekiu bug habitat, the recent discoveries of new locations of the wekiu bug in areas that are not subject to the primary threat of astronomy development reduces the magnitude of the threat from high to moderate. Therefore, we assigned this species an LPN of 8.

Mariana eight spot butterfly (*Hypolimnas octucula mariannensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species that feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum*. Endemic to the islands of Guam and Saipan, the species is now known from ten populations on Guam. This species is currently threatened by predation and parasitism. The Mariana eight spot butterfly has extremely high mortality of eggs and larvae due to predation by alien ants and wasps. Because the threat of parasitism and predation by nonnative insects occur range-wide and can cause significant population declines to this species, they are high in magnitude. The threats are imminent because they are ongoing. Therefore, we assigned an LPN of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egestina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species which feeds upon a single host plant species, *Maytenus thompsonii*. Originally known from and endemic to the islands of Guam and Rota, the species is now known from one population on Rota. This species is currently threatened by alien predation and parasitism. The Mariana wandering butterfly is likely predated on by alien ants and parasitized by native and nonnative parasitoids. Because the threat of parasitism and predation by nonnative insects occur range-wide and can cause significant population declines to this species, they are high in magnitude. These threats are imminent because they are ongoing. Therefore, we assigned an LPN of 2 for this species.

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*)—The following summary is based on information contained in our files and in the petition we received on June 15, 2000. The Miami blue is endemic to south Florida. Historically, it occurred throughout the Florida Keys, north to Hillsborough and Volusia Counties. None were reported to be found between 1996 and 1999, but it is presently located at two sites in the Keys. In 1999, a population was discovered at Bahia Honda State Park on Bahia Honda Key and in 2006 a second population was discovered on the outer islands of Key West National Wildlife Refuge. The former appears restricted to several 100 individuals at most, while the latter likely includes at least 1,500 individuals. Capacity to expand at either site or successfully emigrate from either site appears to be very low due to the sedentary nature of the butterfly and isolation of habitats. The actual area of occupied habitat has not yet been defined. Captive propagation and reintroduction efforts are continuing with some success. The Miami blue is predominantly a coastal species, occurring in disturbed and early successional habitats such as the edges of tropical hardwood hammock, coastal berm forest, and along trails and other open sunny areas, and historically in pine rocklands. These habitats provide larval host plants and adult nectar sources that are required to occur in close proximity. The magnitude of threat is high for this species, due to interacting risks associated with limited population size and range (and loss of historical range), hurricanes, and mosquito control activities. In addition, illegal collection may also pose a threat. Except for hurricanes, the threats are nonimminent because the current range is within a State park and National Wildlife Refuge, wherein the above threats are substantially controlled. Therefore, the Miami blue is assigned an LPN of 6.

Sequatchie caddisfly (*Glyphopsyche sequatchie*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004.

The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee—Owen Spring Branch and Martin Spring run in the Battle Creek system. The Owen Spring Branch population occurs within Sequatchie Cave Park, which is a Class II Natural-Scientific State Natural Area, thus providing statutory protection from collection for the population in Owen Spring Branch. In spite of greater amounts of suitable habitat at the Martin Spring run, Sequatchie caddisflies are more difficult to find at this site. Biologists estimated population sizes at 500 to 5000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. More recently, Dr. David Etnier reported that the Sequatchie caddisfly was abundant at the Owens Spring Branch location during observations in 2001, while only two individuals were observed at the Martin Spring locale. The primary threats to Sequatchie caddisfly include its extremely limited distribution, apparent small population size, the limited amount of occupied habitat, and the ease of accessibility. These threats are gradual and/or not necessarily imminent but are of a high magnitude; therefore, we assigned this species an LPN of 5.

Clifton cave beetle (*Pseudanophthalmus caecus*)—The following summary is based upon information in our files. No new information was provided in the petition we received on May 11, 2004. Clifton cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. Clifton cave beetle is only known from two privately owned Kentucky caves. Soon after the species was first collected in 1963, the entrance to the cave was enclosed due to road construction. Other caves in the vicinity of this cave were surveyed for the species during 1995–1996. Only one additional site was found to support the Clifton cave beetle. It can not be determined at this time if the species still occurs at the original location or if the species has been extirpated from the site by the closure of the cave entrance. The limestone caves in which this species are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species due to its limited distribution. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1–2 years; we therefore have assigned an LPN of 5 to this species.

Icebox cave beetle (*Pseudanophthalmus frigidus*)—The following summary is based upon information in our files. No new information was provided in the petition we received on May 11, 2004. Icebox cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. Icebox cave beetle is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since it was originally collected from the only site known to support the species, but species experts believe that it may still exist there in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species. The magnitude of threat is high for this species due to its limited distribution. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1–2 years; we therefore have assigned an LPN of 5 to this species.

Inquirer cave beetle (*Pseudanophthalmus inquisitor*)—The following summary is based upon information in our files. No new information was provided in the petition we received on May 11, 2004. The inquirer cave beetle is a fairly small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. The inquirer cave beetle is only known from one privately owned Tennessee cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was last observed in 2006. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. The area around the only known site for the species is in a rapidly expanding urban area and indirect impacts, such as chemical or other pollution, could significantly impact both the cave and the species the cave supports. The entrance to the cave is protected by the landowner through a cooperative management agreement with the Service, The Nature Conservancy and Tennessee Wildlife Resources Agency; however, a sinkhole that drains into the cave system is located away from the protected entrance and is near a highway. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities could adversely affect the species. The magnitude of threat is high for this species due to its limited distribution. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1–2 years and it receives some protection under a cooperative management agreement; we therefore have assigned an LPN of 5 to this species.

Louisville cave beetle (*Pseudanophthalmus troglodytes*)—The following summary is based upon information in our files. No new information was provided in the petition we received on May 11, 2004. The Louisville cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is cave dependent and is not found outside the cave environment. Louisville cave beetle is only known from two privately owned Kentucky caves. The limestone caves in which this species are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large

amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, given its narrow distribution. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1–2 years; we therefore have assigned an LPN of 5 to this species.

Tatum Cave beetle (*Pseudanophthalmus parvus*)—The following summary is based upon information in our files. No new information was provided in the petition we received on May 11, 2004. Tatum Cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is cave dependent and is not found outside the cave environment. Tatum Cave beetle is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since 1965, but species experts believe that it still exists in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because its limited numbers mean that any threats could affect its continued existence. The immediacy of threat is non-imminent because there are no known projects planned that would affect the species in the next 1–2 years; we therefore have assigned an LPN of 5 to this species.

Taylor's (Whulge, Edith's) checkerspot butterfly (*Euphydryas editha taylori*)—The following summary is based on information from our files and in the petition received on December 11, 2002. Historically, the Taylor's checkerspot butterfly was known from 70 locations: 23 in British Columbia, 34 in Washington, and 13 in Oregon. Following surveys during the 2007 flight period, 11 populations were known, with a total of about 2,500–3,000 individuals observed rangewide. Currently, eight populations are known from Washington, two of which are in the Willamette Valley of Oregon, and a new location was discovered in British Columbia, Canada, in 2005. The species had not been detected in Canada since 2000, and many negative surveys were conducted until the species was found at a new location on Denman Island, British Columbia. The size and location of the populations may shift from year to year. Most populations are small, usually with fewer than 5 or 10 butterflies detected; one population on Department of Defense land had more than 1,000 individuals in 2006, but this was an exception.

Threats include degradation and destruction of native grasslands to agriculture, residential and commercial development, encroachment by nonnative plants; succession from grasslands to native shrubs and trees, and fire. The grassland ecosystem on which this subspecies depends requires annual management to maintain suitable grassland habitat for the species. Application of *Bacillus thuringiensis* var. *kurstake* (Btk) for Asian gypsy moth control likely contributed to extirpation of the subspecies at three locations in Pierce County, Washington. The use of Btk continues to be a threat if it is used in areas in proximity to native prairies. The magnitude of threats is high because of the extremely small number of populations, the size of remaining populations, and the collapse in the species' distribution; many of the numerous threats could occur simultaneously and affect most of the populations. Threats are imminent because many are ongoing. We assigned the Taylor's checkerspot butterfly an LPN of 3.

Blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The blackline Hawaiian damselfly is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to 16 streams within the Koolau Mountains. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasive nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants (*e.g.* California grass (*Brachiaria mutica*)) also contribute to loss of habitat by forming dense, monotypic stands that completely eliminate any open water. These threats are occurring in varying degrees rangewide for the blackline Hawaiian damselfly. Although there are no efforts being done to control or eradicate nonnative fish or insects or to stop the loss of habitat, the 16 streams are widely dispersed on both sides of the mountain range and are highly unlikely to experience complete loss of populations at the same time. Therefore the magnitude of the threats is moderate. Threats to the blackline Hawaiian damselfly from loss of habitat and introduced nonnative fish and insects are ongoing and therefore are imminent. Therefore, we assigned this subspecies an LPN of 9.

Crimson Hawaiian damselfly (*Megalagrion leptodemas*)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Flying earwig Hawaiian damselfly (*Megalagrion nesiotes*)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Oceanic Hawaiian damselfly (*Megalagrion oceanicum*)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Megalagrion xanthomelas* is a stream-dwelling damselfly species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species is now restricted to 16 populations on the islands of Oahu, Maui, Molokai, Lanai, and Hawaii. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants (*e.g.* California grass (*Brachiaria mutica*)) also contribute to loss of habitat by forming dense, monotypic stands that completely eliminate any open water. Nonnative fish and plants are found in all the streams the orangeblack damselfly occur in, except the Oahu location, where there are no nonnative fish. We assigned this species an LPN of 8 because though the threats are ongoing and therefore imminent, they occur in varying degrees throughout the range of

the species and are considered of moderate magnitude.

Pacific Hawaiian damselfly (*Megalagrion pacificum*)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Picture-wing fly (*Drosophila attigua*)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Picture-wing fly (*Drosophila digressa*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004, but new information was provided by one *Drosophila* expert in 2006. This picture-wing fly, a member of the family Drosophilidae, feeds only upon species of *Charpentiera*, and is endemic to the Hawaiian Island of Hawaii. Never abundant in number of individuals observed, *D. digressa* was originally known from 5 population sites and may now be limited to as few as 1 or 2 sites. Due to the small population size of the species and its small known habitat area, *Drosophila* researchers believe this species and its habitat are particularly vulnerable to a myriad of threats. Feral ungulates (pigs, goats, and cattle) degrade and destroy *D. digressa* host plants and habitat by directly trampling plants, facilitating erosion, and spreading nonnative plant seeds. Nonnative plants degrade host plant habitat and compete for light, space, and nutrients. Direct predation of *D. digressa* by nonnative social insects, particularly yellow jacket wasps, is also a serious threat. Additionally, this species faces competition at the larval stage from non-native tipulid flies, which feed within the same portion of the decomposing host plant area normally occupied by the *D. digressa* larvae during their development with a resulting reduction in available host plant material. The threats to the native forest habitat of *Drosophila digressa*, and to individuals of this species, occur throughout its range and are expected to continue or increase without their control or eradication, and are considered imminent, because they are ongoing. No known conservation measures have been taken to date to specifically address these threats, and we have therefore assigned this species an LPN of 2.

Stephan's riffle beetle (*Heterelmis stephani*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information from our files. No new information was provided in the petition received on May 11, 2004.

Dakota skipper (*Hesperia dacotae*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files, including information from the petition received on May 12, 2003.

Mardon skipper (*Polites mardon*)—The following summary is based on information contained in our files and the petition we received on December 24, 2002. The Mardon skipper is a rare northwestern butterfly with a remarkably disjunct range. Currently this species is known from four widely separated regions: south Puget Sound region, southern Washington Cascades, Siskiyou Mountains of southern Oregon, and coastal northwestern California. The number of documented locations for the species has increased from less than 10 in 1997 to more than 50 rangewide in 2007. However, most populations for Mardon skipper are extremely small, and approximately 10 locations have populations with more than 50 individuals. The Mardon skipper spends its entire life cycle in one location, often on the same grassland patch. The dispersal ability for Mardon skipper is restricted. Threats include habitat loss and degradation due to development, overgrazing, use of herbicides and pesticides, encroachment of nonnative and native vegetation, succession from grassland to forest, fire suppression; direct loss of individuals due to fire; recreational activities; insect collecting; and random, naturally occurring events. The species' limited dispersal ability restricts the likelihood of recolonization once a population is lost. The likelihood of Mardon skippers dispersing between suitable habitat patches in a fragmented landscape is low. The magnitude of threats is high because of the small population sizes and disjunct distribution of the species that limits its ability to disperse. Loss of any of the populations could threaten the continued existence of the species within each of its disjunct population centers. It would be unlikely that any threat would affect all known locales simultaneously. Overall, the threats are nonimminent because the threats are not currently occurring at all known population sites. We assign an LPN of 5 to the Mardon skipper.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files, including information from the petition we received on April 21, 1994.

Highlands tiger beetle (*Cicindela highlandensis*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Highlands tiger beetle is narrowly distributed and restricted to areas of bare sand within upland oak scrub and pine vegetation on the ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. Adult tiger beetles have been found at 40 sites from near Haines City south to Josephine Creek. In 2004–2005 surveys, biologists found a total of 1,574 adults at 40 sites, compared with 643 adults at 31 sites in 1996, 928 adults at 31 sites in 1995, and 742 adults at 21 sites in 1993. Of the 40 sites in the 2004–2005 surveys with one or more adults: 3 sites were found to have large populations of over 100 adults [Catfish Creek Preserve (493), Snell Creek South (193), and Flaming Arrow Scout Camp (175)]; 3 sites had populations of 50–99 adults; 8 sites had 20–49 adults, 13 sites had 10–19 adults, and 13 sites had fewer than 10 adults. Results from a limited removal study at four sites suggest that the actual population size at the various survey sites is likely to be as much as two times as high as indicated by the visual index counts. Lack of fire to create open sand, pesticide use, small population sizes, and over-collecting pose serious threats to this species. Because this species is narrowly distributed with specific habitat requirements and small populations, the magnitude of threats is high. Although the majority of its historic range has been lost, degraded, and fragmented, numerous sites are protected and land managers are implementing prescribed fire, which should restore habitat and help reduce threats. Overall, the threats are nonimminent. Therefore, we assigned the Highlands tiger beetle an LPN of 5.

Arachnids

Warton cave meshweaver (*Cicurina wartoni*)—The following summary is based on information from our files. No new information was received since the last Candidate Notice of Review published on September 12, 2006, or was provided in the petition we received on May 11, 2004. Warton Cave meshweaver is an eyeless, cave-dwelling, unpigmented, 0.25-inch long invertebrate known only from female specimens. This meshweaver is known to occur in only one cave (Pickle Pit) in Travis County, Texas. Primary threats to the species and its habitat are predation and competition from fire ants and surface and subsurface effects from runoff from an adjacent subdivision.

The magnitude of threats is considered high, because the single location for this species makes it highly vulnerable to extinction. The threats are imminent, because fire ants are known to occur in the vicinity of the cave, and impacts to the cave from runoff and human activities are an imminent threat. Thus, we assign an LPN of 2 to this species.

Crustaceans

Anchialine pool shrimp (*Metabetaeus lohena*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Metabetaeus lohena* is an anchialine pool-inhabiting species of shrimp belonging to the family Alpheidae. This species is endemic to the Hawaiian Islands and is currently known from populations on the islands of Oahu, Maui, and Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss from degradation. The pools where this species occurs on Maui and Hawaii Island are located within State Natural Area Reserves (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. The pools where this species occurs on the island of Oahu do not receive protection from collection of the species or disturbance of the pools. Enforcement of collection and disturbance prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species are of a high magnitude. However, we consider the primary threats of predation from fish and loss of habitat due to degradation to be nonimminent, because no fish were observed in any of the pools where this species occurs and there has been no documented dumping in the pools this species occurs in on the islands of Maui or Hawaii. Only one site on Oahu had a dumping instance, and in that case the dumping was cleaned up and the species subsequently returned. No additional dumping events are known to have occurred. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Palaemonella burnsi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Palaemonella burnsi* is an anchialine pool-inhabiting species of shrimp belonging to the family Palaemonidae. This species is endemic to the Hawaiian Islands and is currently known from three populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation. The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. On the island of Hawaii, the species occurs within a National Park, and collection and disturbance are also prohibited. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species are of high magnitude. However, threats are considered nonimminent, because a 2004 survey did not find fish in the pools where these shrimp occur on Maui or the island of Hawaii, and there was no evidence of recent habitat degradation. Therefore, the threats of predation from fish and habitat degradation are nonimminent, and we assigned this species an LPN of 5.

Anchialine pool shrimp (*Procaris hawaiana*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Procaris hawaiana* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae. This species is endemic to the Hawaiian Islands and is currently known from two populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation from fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation. The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of these prohibitions is difficult and the negative effects from the introduction of fish are extensive and happen quickly. There are no conservation efforts underway to alleviate the potential for any of these threats in the one pool on the island of Hawaii. Therefore, threats to this species remain at high magnitude. However, the threats to the species are nonimminent because, during a 2004 survey, no fish were observed in the pools where these shrimp occur on Maui and no fish were observed in the one pool on the island of Hawaii during a site visit in 2005. In addition, there were no signs of dumping or fill in any of the pools where the species occurs. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Vetericaris chaceorum*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Vetericaris chaceorum* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae; it is the only species in its genus. This species is endemic to the Hawaiian Islands and is only known from one population in a single pool on the island of Hawaii. The primary threats to this species are predation from nonnative fish and habitat degradation and contamination from illegal trash dumping. This species would be highly vulnerable to predation by any intentionally or accidentally introduced fish, or contamination from illegal dumping into its single known location. This pool lies within lands administered by the State of Hawaii Department of Hawaiian Home Lands. The threats to *Vetericaris chaceorum* from habitat degradation and destruction, and predation by nonnative fish are of high magnitude, because this species occurs in only one pool. All individuals of this species may be adversely impacted by a single dumping of trash or release of nonnative fish in its only known pool. However, the threats are nonimminent, as fish have not been introduced into the pool (nor is there any reason to believe that introduction is imminent) and a site visit in early 2005 showed there were no signs of dumping or fill. Therefore we assigned this species an LPN of 4 because the threats are of high magnitude though nonimminent, and the species is in a monotypic genus.

Troglobitic groundwater shrimp (*Typhlatya monae*)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files, including information from the petition we received on May 11, 2004.

Flowering plants

Abronia alpina (Ramshaw Meadows sand-verbena)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004.

Arabis georgiana (Georgia rockcress)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Georgia rockcress grows in a

variety of dry situations, including shallow soil accumulations on rocky bluffs, ecotones of gently sloping rock outcrops, and in sandy loam along eroding river banks. It is occasionally found in adjacent mesic woods, but it will not persist in heavily shaded conditions. Currently a total of 20 populations are known from the Gulf Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces of Alabama and Georgia. Populations of this species typically have a limited number of individuals over a small area. Habitat degradation, more than outright habitat destruction, is the most serious threat to the continued existence of this species. Disturbance, associated with timber harvesting, road building, and grazing has created favorable conditions for the invasion of exotic weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. Eight populations are currently or potentially threatened by the presence of exotics. The heritage programs in Alabama and Georgia have initiated plans for exotic control at several populations. The magnitude of threats to this species is moderate to low due to the number of populations (20) across multiple counties in two states and the nature of the threats. However, since a number of the populations are currently being affected by nonnative plants, the threat is imminent. Thus, we assigned an LPN of 8 to this species.

Argythamnia blodgettii (Blodgett's silverbush)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. Blodgett's silverbush is found in open, sunny areas in pine rockland, edges of rockland hammock, edges of coastal berm, and sometimes disturbed areas at the edges of natural areas. Plants can be found growing from crevices on limestone, or on sand. The pine rockland habitat where it occurs in Miami-Dade County and the Florida Keys requires periodic fires to maintain habitat with a minimum amount of hardwoods. Based upon available data, there are approximately 27 extant occurrences, 12 in Monroe County and 15 in Miami-Dade County; many occurrences are on conservation lands; however, 4–5 sites are recently thought to be extirpated or destroyed. The estimated population size of Blodgett's silverbush in the Florida Keys, excluding Big Pine Key, is roughly 11,000; the estimated population in Miami-Dade County is 375 to 13,650 plants. Blodgett's silverbush is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Threats such as road maintenance, road enhancement, infrastructure, and illegal dumping threaten some populations. Blodgett's silverbush is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Sea level rise is a long-term threat that will continue; it is expected to continue to affect pine rocklands and ultimately reduce the extent of available habitat, especially in the Keys. Overall, the magnitude of threats is moderate and the threats are nonimminent. Thus, we assigned an LPN of 11 to this species.

Artemisia campestris var. *wormskioldii* (Northern wormwood)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from only two populations in Klickitat and Grant Counties, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore and on islands in the Columbia River. The two sites are separated by 200 miles (322 kilometers) of the Columbia River and three large hydroelectric dams. The Klickitat County population is declining; it is unclear whether the Grant County population is stable or declining, but it is vulnerable to environmental variability. Surveys of apparently suitable habitat along the Hanford Reach have not detected any additional plants.

Threats to northern wormwood include direct loss of suitable habitat through regulation of water levels in the Columbia River and placement of riprap along the river bank; trampling of plants as a result of recreational use; competition with non-native invasive species; burial by wind and water-borne sediments; a small population size that makes both sites susceptible to genetic drift and inbreeding; and the potential for hybridization with two other species of *Artemisia*. Ongoing conservation actions have reduced trampling, but have not eliminated or reduced the other threats at the Grant County site. The magnitude of threat is high for this subspecies, because the only two remaining populations are widely separated and distributed such that one or both populations could be eliminated by a single disturbance. The threats are imminent, because recreational use is ongoing, invasive nonnative species occur at both sites, erosion of the substrate is ongoing at the Klickitat County site, and high water flows are random, naturally occurring events that may occur unpredictably in any year. Therefore, we have retained an LPN of 3 for this subspecies.

Astelia waialealae (Pa'iniu)—We have not updated our candidate assessment as we are currently developing a proposed listing rule for this species.

Astragalus tortipes (Sleeping Ute milkvetch)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sleeping Ute milkvetch is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, 3,744 plants were recorded at 24 locations covering 500 acres within an overall range of 64,000 acres. Available information from 2000 indicates that the species remains stable. Recently, the Tribe expressed interest in conducting new surveys and initiating protection for the species. Previous and ongoing threats from borrow pit excavation, off-highway vehicles, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and number of plants by small amounts. Off-highway vehicle use of the habitat is reportedly increasing. Oil and gas development is active in the general area, but we have received no information from the tribe to indicate whether there is development within the habitat for the plants. The threats are moderate in magnitude, since they have had minor impacts and, based on information we have, the population appears to be stable. In addition, the Tribe indicated that it is developing a management plan for the species and has started to implement some protective measures such as installing fencing and removing cattle from the fenced area where the plants occur. Because of the general lack of information on current threats from the Tribe, imminence of threats is not fully known. While ORV use is currently occurring and may be increasing, oil and gas production is not known to currently occur in the areas where this species exists. Overall, we conclude threats are nonimminent. Therefore, we assigned a LPN of 11 to this species.

Bidens amplectens (Kookooalu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an erect perennial or facultative annual herb found in mixed lowland dry shrubland/grassland on Oahu, Hawaii. Known from one

population of 500 to 1,000 individuals in the Waianae Mountains, the threats to this species are nonnative plants that increase the fuel load and fire threat, and compete for habitat. The magnitude of threats continues to be high because no conservation measures have been taken to address them and because of the potential for the elimination of the only known population by a single stochastic or naturally occurring event. Threats continue to be imminent because they are ongoing. We retained an LPN of 2 for this species.

Bidens campylotheca ssp. *pentamera* (Kookooalu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This subspecies is an erect, perennial herb found in *Cheirodendron-Metrosideros polymorpha* (olapa-ohia) montane wet forest on Maui, Hawaii. This subspecies is known from four populations with a total of approximately 350 individuals. *Bidens campylotheca* ssp. *pentamera* is threatened by feral pigs that degrade and destroy habitat, and by nonnative plants that compete for habitat. Feral pigs have been fenced out of one population at Kipahulu. The remaining populations on east and west Maui are still affected by these threats. This subspecies is represented in an *ex-situ* collection. However, these on-going conservation efforts benefit only one of the four known populations and therefore threats continue to be of a high magnitude, because they threaten the continued existence of this subspecies. In addition, threats to *B. campylotheca* ssp. *pentamera* are imminent because they are ongoing in three populations. Therefore, we retained an LPN of 3 for this subspecies.

Bidens campylotheca ssp. *waihoiensis* (Kookooalu)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Bidens conjuncta (Kookooalu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Bidens conjuncta* is an erect, perennial herb found in *Metrosideros-Dicranopteris-Cheirodendron* (ohia-uluhe-olapa) lowland to montane wet forest and shrubland on Maui, Hawaii. Seven populations are known, totaling approximately 2,200 individuals scattered throughout upper elevation drainages of west Maui. Although the overall range of the species has not changed, the number of individuals has declined over the last decade or so. This species is threatened by pigs that degrade and destroy habitat, and eat vegetative parts and fruit of *B. conjuncta*, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of portions of the populations of *B. conjuncta*, and nonnative plants have been greatly reduced in the fenced areas. The threats from feral pigs and nonnative plants are, therefore, of a moderate magnitude to this species. However, these threats are imminent because they are ongoing. Therefore, we retained an LPN of 8 for this species.

Bidens micrantha ssp. *ctenophylla* (Kookooalu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This subspecies is an erect, perennial herb found in open mixed shrubland to dry *Metrosideros* (ohia) forest on the island of Hawaii, Hawaii. This subspecies is endemic to the island of Hawaii, where it is restricted to an area of less than 10 square miles (26 square kilometers). *Bidens micrantha* ssp. *ctenophylla* is known from three wild and four outplanted populations totaling approximately 2,000 to 3,000 individuals, the majority of which occur in only two (wild) populations. This subspecies is threatened by fire and nonnative plants, and two populations are threatened by residential and commercial development. The threats to *B. micrantha* ssp. *ctenophylla* from fire and nonnative plants are of a high magnitude and imminent because they are occurring range-wide, they threaten the continued existence of the species, and no efforts for their control have been undertaken. In addition, two populations are also threatened by development. Therefore, we retained an LPN of 3 for this subspecies.

Brickellia mosieri (Florida brickell-bush)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is restricted to pine rocklands of Miami-Dade County, Florida. This habitat requires periodic prescribed fires to maintain the low understory and prevent encroachment by native tropical hardwoods and exotic plants, such as Brazilian pepper. Only one large population (up to 10,000 individuals) is known to exist, plus 18 other occurrences each containing less than 100 individuals. Ten of these occurrences are on conservation lands. This species is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. Thus, the overall magnitude of threat is moderate. The threats are ongoing and thus imminent. We assigned this species an LPN of 8.

Calamagrostis expansa (Maui reedgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a robust, short-rhizomatous perennial found in wet forest, open bogs, and bog margins on the islands of Maui and Hawaii, Hawaii. Historically rare, *C. expansa* was restricted to wet forest and bogs on Maui. It is unknown what the historical status was on Hawaii. Currently, this species is known from 100 populations totaling approximately 400 individuals on Maui, and was recently discovered in five populations totaling approximately 300 individuals on the island of Hawaii. *Calamagrostis expansa* is threatened by pigs that degrade and destroy habitat and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of most of the west Maui populations where *C. expansa* currently occurs, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and in all of the populations on the island of Hawaii. Therefore, the threats from feral pigs and nonnative plants are of a high magnitude and imminent for *C. expansa* and we retained an LPN of 2 for this species.

Calamagrostis hillebrandii (Hillebrand's reedgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Calamagrostis hillebrandii* is a slender, short-rhizomatous perennial found in *Metrosideros-Machaerina* montane wet bog or *Metrosideros-Rhynchospora-Oreobolus* mixed bog on Maui, Hawaii. This species is known from two populations of about 2,000 individuals, restricted to the bogs of west Maui. There is an unconfirmed report of *C. hillebrandii* from central Molokai. This species is currently threatened by pigs

that degrade and destroy habitat and nonnative plants that outcompete and displace it. A portion of one population is protected by an ungulate exclosure fence while the other population may indirectly benefit from conservation actions for ungulate control and control of nonnative plants conducted in a nearby preserve. The threats are imminent because they are ongoing in one of the two known populations. Because they threaten the continued existence of the species, the threats are high in magnitude. Therefore, we retained an LPN of 2 for this species.

Calliandra locoensis (no common name)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. *Calliandra locoensis* is a spiny, leguminous shrub currently known from only two localities within the Susúa Commonwealth Forest in the municipalities of Yauco and Sabana Grande, in southwestern Puerto Rico. Twenty-five native species of *Calliandra* have been reported for the Antilles, three of which are native to Puerto Rico, including *Calliandra locoensis*. This species is endemic to Puerto Rico, and was discovered in 1991 during a study of the flora of the Susúa Commonwealth Forest. It was described by García and Kolterman in 1992.

Calliandra locoensis is found along one creek in semi-evergreen to deciduous forests on shallow, serpentine soils with low nutrients, high drainage, and low fertility. Much of the vegetation in the forest was cut for wood, cultivation, livestock grazing, and charcoal production, prior to its designation as a public forest. *Calliandra locoensis* exhibits a low degree of self-compatibility in pollination tests. Seeds have a short viability period, do not appear to have a biotic dispersal agent (dispersed by dehiscence—seed pod splits open), and require mesic conditions for germination, which may be factors in the limited distribution of the species. The small number of individuals in the two populations, restricted distribution (two localities), forest management practices (accidental trampling, brush clearing, trail maintenance), forest fires (natural or manmade), and catastrophic natural events (hurricanes, floods, mudslides), threaten this species. We assigned an LPN of 5 to this species because the magnitude of threat to *Calliandra locoensis* is high because the threats can result in direct mortality and further reduce the populations, combined with its restricted distribution, apparent low dispersal capability, and population number (only two small populations relatively close to one another). The threats are nonimminent given that the populations are found within protected lands and there are no known projects or management activities planned that would destroy the known populations of *Calliandra locoensis*.

Calochortus persistens (Siskiyou mariposa lily)—The following summary is based on information contained in our files and the petition we received on September 10, 2001. The Siskiyou mariposa lily is a narrow endemic that is restricted to two disjunct ridge tops in the Klamath-Siskiyou Range on the California-Oregon border. In California, this species is currently found at nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbug Ridge. In 1998, five Siskiyou mariposa lily plants were discovered on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wild fire; increased fuel loading and subsequent risk of wild fire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance and exotic weed and grass species introduction as a result of heavy recreational use and construction of fire breaks. Dyer's woad (*Isatis tinctoria*), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, is now found throughout the California population, affecting 90 percent of the known lily habitat. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of two disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years and competition from exotic plants threaten the continued existence of this species. Because of the restricted range and low numbers, the magnitude of threats is high. While some of the threats are ongoing, others are not, and overall the threats are nonimminent. We assigned an LPN of 5 to this species.

Calyptranthes estremerae (no common name)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. *Calyptranthes estremerae* is a small tree from the subtropical moist forest of northwestern Puerto Rico, in the municipalities of Camuy, Utuado, and Arecibo. *Calyptranthes estremerae* was only known from several individuals found near the recreation area adjacent to the Camuy Caves, but specimens were later found within the Río Abajo Commonwealth Forest (up to 50 individuals) at a site that was affected by the construction of Highway PR 10 in 1995. At the present time, a minimum of 100 specimens of *Calyptranthes estremerae* are estimated for the Río Abajo Commonwealth Forest and undetermined number in the Camuy area. The magnitude of threat to *Calyptranthes estremerae* is considered high, due to restricted distribution and small number of individuals, catastrophic natural events, and the potential destruction of specimens from expansion of recreational facilities. However, these threats are not imminent, because the largest known population of *Calyptranthes estremerae* is found within protected lands, there are no known projects planned that would destroy the sites, and the species can be transplanted successfully. Therefore, we assign an LPN of 5 to *Calyptranthes estremerae*.

Canavalia napaliensis (Awikiwiki)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Canavalia pubescens (Awikiwiki)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Awikiwiki is a perennial climber found in lowland dryland forest on Maui and Lanai, and is possibly on the island of Niihau, Hawaii. This species is known from eight populations totaling at least 123 individuals. This species is threatened by development (Maui), goats (Maui) and axis deer (Maui and Lanai) that degrade and destroy habitat, and by nonnative plants that outcompete and displace native plants (both islands). An ungulate exclosure fence protects six individuals of *C. pubescens*, and weed control is ongoing at this location on Maui. This species is represented in two *ex situ* collections. Threats to this species from feral goats, axis deer, and nonnative plants are ongoing, or imminent, and of high magnitude because they significantly affect the species throughout its range. Therefore, we retained an LPN of 2 for this species.

Castilleja christii (Christ's paintbrush)—The following summary is based on information contained in our files and the petition we received on January 2, 2001. *Castilleja christii* is found in one population on the summit of Mount Harrison in Cassia County, Idaho. This endemic species is considered a hemiparasite, and it grows in association with subalpine meadow and sagebrush habitats. The population found on 85 ha (220 ac) may be large (greater than 10,000 individual plants); however, an accurate current population estimate is not yet available. Monitoring indicates that reproductive stems per plant and plant density decreased significantly between 1995 and 2005. The largest threat to the species is from nonnative invasive plants, the majority of which is smooth brome (*Bromus inermis*). Despite a commitment by the Forest Service and the Service to control smooth brome until our efforts are successful or for the next 10 years, recent control efforts conducted in 2005 and 2006 have not been successful in reducing the smooth brome infestation. Other threats to *Castilleja christii* from recreational use appear to be mostly seasonal and affect only a small portion of the population, although they too are imminent. The magnitude of the threats is moderate at this time, primarily due to the lack of control over the smooth brome infestation. This threat from smooth brome is imminent because the threat still persists in levels that affect the native plant community that provides habitat for *C. christii*. Thus, we assign an LPN of 8 to this species.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. New survey results were attained in March 2006.

Chamaesyce deltoidea pinetorum (Pineland sandmat)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—See above in ''*Summary of Listing Priority Changes in Candidates*.'' The above summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004.

Chamaesyce eleanoriae (Akoko)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Chamaesyce remyi var. *kauaiensis* (Akoko)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Chamaesyce remyi var. *remyi* (Akoko)—We have not updated our candidate assessment for this species as we are currently developing a proposed listing rule.

Charpentiera densiflora (Papala)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower)—The following summary is based on information contained in our files and the petition we received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* is a low-growing herbaceous annual plant in the buckwheat family. Germination occurs following the onset of late-fall and winter rains and typically represents different cohorts from the seed bank. Flowering occurs in the spring, generally between April and June. *Chorizanthe parryi* var. *fernandina* grows up to 30 centimeters in height and 5 to 40 centimeters across.

The plant currently is known from two disjunct localities: the first is in the southeastern portion of Ventura County on a site formerly known as Ahmanson Ranch, and the second is in an area of southwestern Los Angeles County known as Newhall Ranch. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

The threats currently facing San Fernando Valley spineflower include threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade factors. The threats to *Chorizanthe parryi* var. *fernandina* from habitat destruction or modification are less than they were four years ago. One of the two populations (Ahmanson Ranch) is in permanent, public ownership and is being managed by an agency that is working to conserve the plant. The other population (Newhall Ranch) is under threat of development; however, a Candidate Conservation Agreement (CCA) is being developed with the landowner, and it is possible that the remaining plants can also be conserved. Until such an agreement is finalized, the threat of development and the potential damage to the Newhall Ranch population still exists, as shown by the destruction of some plants during installation of an agave farm. *Chorizanthe parryi* var. *fernandina* may be threatened by invasive nonnative plants, including grasses, which could potentially displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment. *Chorizanthe parryi* var. *fernandina* is particularly vulnerable to extinction due to its concentration in two isolated areas. The existence of only two areas of occurrence, and a relatively small range, makes the variety highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, erosion, or other occurrences. We retained an LPN of 6 for *C. parryi* var. *fernandina* due to high-magnitude, nonimminent threats.

Chromolaena frustrata (Cape Sable thoroughwort)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is found most commonly in open sun to partial shade at the edges of rockland tropical hammock and in coastal rock barrens. There are nine extant occurrences located at five islands in the Florida Keys and one small area in Everglades National Park. The plant has been extirpated from half of the islands where it occurred. Prior to Hurricane Wilma in 2005, the population was estimated at roughly 5,000 individuals, with all but 500 occurring on one privately owned island.

This species is threatened by habitat loss and modification, even on public lands, and habitat loss and degradation due to threats from exotic plants at almost all sites. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. While these factors may also work to maintain coastal rock barren habitat in the long-term, Hurricane Wilma appears to have had severe impacts, at least in the short-term. Plants have not been located in Everglades National Park since Hurricane Wilma and other occurrences probably declined due to inundation of its coastal barren and rockland hammock habitats. The long-term effects of these impacts are unknown. Sea level rise is considered a major threat that will continue. Potential effects from other changes in fresh water deliveries and the construction of the Buttonwood Canal are unknown. Problems associated with small population size and isolation are likely major factors, as occurrences may not be large enough to be viable; this narrowly endemic plant has uncertain viability at most locations, especially following Hurricane Wilma. Thus, these factors constitute a high

magnitude of threat. Threats are imminent as they are ongoing. As a result, we assigned an LPN of 2 to this species.

Consolea corallicola (Florida semaphore cactus)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Florida semaphore cactus is endemic to the Florida Keys and was discovered on Big Pine Key in 1919 but has since been extirpated there as a result of road building and poaching. This cactus grows close to salt water on bare rock with a minimum of humus soil cover in or along the edges of hammocks near sea level. The species is known to occur naturally only in two areas, Little Torch Key and Biscayne National Park. Outplanting has resulted in the reestablishment of a population in Dagny Johnson Key Largo Hammock Botanical State Park in North Key Largo as well as in some of the lower keys. Outplanting success has been low and more research is needed to determine the requirements of this cactus. Few plants remain in the population at The Nature Conservancy's Torchwood Hammock Preserve on Little Torch Key. Two sexual morphs (males and weak hermaphrodites) comprise the population on Little Torch Key. The female sex morph is absent from the population and sexual reproduction at this site is not possible without human intervention. Regeneration in this population is restricted to clonal propagation. At least 629 plants were discovered on a key in Biscayne National Park in November of 2001. During monitoring work conducted in 2005, a total of 655 plants were documented. Recent studies have found no genetic diversity within the two wild populations. The results were consistent with previous reproductive biology studies that suggested that the cactus does not propagate sexually and that asexual reproduction is the main life history strategy of this species. The causes for the population decline of this species include destruction or modification of habitat, predation from *Cactoblastis cactorum* moths and disease, poaching and vandalism, sea level rise, and hurricanes. Because of low population numbers, lack of variation between and within populations, reproductive problems, and numerous ongoing threats, we assigned this species an LPN of 2.

Cordia rupicola (no common name)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004.

Cyanea asplenifolia (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea asplenifolia* is a shrub found in *Acacia-Metrosideros* (koa-ohia) forest on Maui, Hawaii. Currently, this species is known from three populations totaling fewer than 187 individuals. *Cyanea asplenifolia* is threatened by pigs, goats, and cattle that degrade and destroy habitat and by nonnative plants, such as Australian tree fern, that outcompete and displace it. This species is likely threatened by habitat degradation caused by axis deer and by feral ungulates, rats, and slugs that may directly prey upon and defoliate individuals. Pig and goat exclusion fences protect individuals of two of the three known populations of this species and nonnative plants have been reduced in one fenced area; however, continued monitoring of these fences will be necessary, as feral ungulates from surrounding areas can easily access unmaintained fenced areas. This species is represented in three *ex-situ* collections. The threats continue to be of a high magnitude because they significantly affect the species resulting in direct mortality or reduced reproductive capacity. The threats are imminent because they are ongoing in at least two of the three known populations. Therefore, we retained an LPN of 2 for this species.

Cyanea calycina (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an unbranched shrub found in *Acacia-Metrosideros-Dicranopteris* (koa-ohia-uluhe) montane mesic to wet forest and wet gulches and streambanks on Oahu, Hawaii. *Cyanea calycina* is known from 28 populations totaling approximately 262 individuals. This species is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats to this species include goats that degrade and destroy habitat, and rats and slugs that may directly prey upon and defoliate individuals. Ungulate fences provide protection to five populations of *C. calycina* in the Waianae Mountains, but the fences must be continually maintained to prevent incursion. Nonnative plants are currently being controlled within the fenced areas, and partial control measures are being implemented to address potential threats from rats. There are no other conservation measures underway in the other 23 populations to alleviate these ongoing, or imminent, threats to *C. calycina*. These threats are of a high magnitude because they significantly affect the species throughout its limited range resulting in direct mortality or reduced reproductive capacity. The threats are imminent in all but five populations. Therefore, we retained an LPN of 2 for this species.

Cyanea eleeleensis (Haha)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Cyanea kuhihewa (Haha)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Cyanea kunthiana (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea kunthiana* is a shrub found in closed *Metrosideros-Dicranopteris* (ohia-uluhe) montane wet forest on Maui, Hawaii. The historic range of *C. kunthiana* was wet forest on the island of Maui. Currently, *C. kunthiana* is declining throughout its range and is known from 15 populations with a combined total of slightly more than 200 individuals. This species is threatened by pigs that directly prey upon the plants and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals. While large-scale fencing, ungulate removal, and invasive species control measures are underway in areas in which five of the current populations exist, these efforts have not served to completely remove these threats, and there are no efforts to control the ongoing and imminent threats to the other 10 populations. Therefore, the threats continue to be of a high magnitude to *C. kunthiana*. Because the threats continue to be of a high magnitude and are imminent for 10 of the 15 populations, we retained an LPN of 2 for this species.

Cyanea lanceolata (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea lanceolata* is a shrub found in *Acacia koa-Metrosideros polymorpha* (koa-ohia) lowland mesic forest on Oahu, Hawaii. This species is known from six populations totaling fewer than 100 individuals. *Cyanea lanceolata* is threatened by pigs that eat plants and degrade and destroy habitat, and by nonnative plants that outcompete and

displace it. Likely threats to this species include rats and slugs that may directly prey upon and defoliate individuals. This species is represented in an *ex-situ* collection. There are no conservation measures underway to alleviate the ongoing, or imminent, threats to *C. lanceolata.* These threats are of a high magnitude because they are occurring throughout its limited range and they significantly affect species resulting in direct mortality or reduced reproductive capacity. The threats are ongoing, and, therefore, imminent, in all populations. Therefore, we retained an LPN of 2 for this species.

Cyanea obtusa (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea obtusa* is a shrub found in *Metrosideros polymorpha* (ohia) mixed mesic forest on Maui, Hawaii. This species is known from three populations with a combined total of fewer than 44 individuals, with 30 of these being possible hybrids. *Cyanea obtusa* is threatened by feral goats, pigs, and cattle that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats include fire, and rats and slugs that may directly prey upon and defoliate individuals of *C. obtusa.* Feral pigs have been fenced out of one of the three populations of this species. Nonnative plant control is underway in the fenced area. Although one of the three populations of *C. obtusa* has been fenced and is undergoing weed control, there are no efforts to control the ongoing and imminent threats to the other two populations. The threats continue to be of a high magnitude for *C. obtusa* because they significantly affect the species resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Cyanea tritomantha (Aku)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea tritomantha* is a palm-like tree found in *Metrosideros-Cibotium* montane wet forest on the island of Hawaii, Hawaii. This species is known from five populations with a total of approximately 135 wild and 373 outplanted individuals in Olaa, Kau, and Laupahoehoe on the island of Hawaii. *Cyanea tritomantha* is threatened by pigs and cattle that degrade and destroy habitat, and nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals, and human trampling of individuals located near trails. Feral pigs and cattle have been fenced out of three populations of *C. tritomantha* and nonnative plants have been reduced in the fenced areas. Although three populations of *C. tritomantha* have been fenced and weeds are being controlled in these fenced areas, there are no efforts to control the ongoing and imminent threats to the other populations. The threats continue to be of a high magnitude to *C. tritomantha* because they significantly affect the species resulting in direct mortality or reduced reproductive capacity. Because the threats continue to be of a high magnitude and are imminent for the unmanaged populations, we retained an LPN of 2 for this species.

Cyrtandra filipes (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Haiwale is a shrub found in lowland to montane wet forest on Maui and Molokai, Hawaii. Historically rare, *C. filipes* was found in southeastern Molokai and west Maui. Currently, this species is known from nine populations, three on Molokai and six on west Maui, totaling approximately 2,000 individuals. There is some question as to the true identity of the Maui populations, which do not fit the description of the species precisely. If, upon further taxonomic study, the Maui populations are determined not to be this species, then it is even more rare, with only the Molokai population of a few individuals remaining. *Cyrtandra filipes* is threatened by pigs, goats, and deer that degrade and destroy habitat, by nonnative plants that outcompete and displace it, and potentially by rats that directly prey on it. Feral pigs have been fenced out of one of the populations of *C. filipes,* and strategic fencing for axis deer is under construction on west Maui, but deer are able to jump over most pig exclusion fences so they are still considered a threat. Nonnative plants are being reduced in the population that is fenced but all populations are potentially threatened by rats. The threats from pigs and nonnative plants are of a high magnitude because of their severity and the fact that they occur in eight of the nine known populations. In addition, these threats are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Cyrtandra kaulantha (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyrtandra kaulantha* is a shrub found in moist wooded gulches in dense shade on Oahu, Hawaii. This species is known from four populations with a total of 29 individuals in subgulches in Waianu Valley. *Cyrtandra kaulantha* is threatened by pigs that degrade and destroy habitat, nonnative plants that outcompete and displace it, genetic bottlenecks, random demographic fluctuations, and stochastic environmental events such as tree falls and hurricanes. Direct predation by slugs is a potential threat, as well. None of the populations are protected by fences. Nonnative plants have been reduced in the four known populations. There are no other conservation measures being taken to alleviate these ongoing and imminent threats to *C. kaulantha.* These threats are of a high magnitude because of their severity and the fact that they are occurring throughout its limited range. Therefore, we retained an LPN of 2 for this species because the threats continue to be of a high magnitude and are imminent in all populations.

Cyrtandra oenobarba (Haiwale)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Cyrtandra oxybapha (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyrtandra oxybapha* is a shrub found in *Metrosideros polymorpha-Cheirodendron trigynum* (ohia-olapa) montane wet forest to mesic *Acacia-Metrosideros* (koa-ohia) forest on Maui, Hawaii. Currently, this species is known only from one population totaling 50 to 100 individuals in the Kahikinui area of east Maui and one additional population of 20 to 30 individuals on west Maui. This species is threatened by pigs, goats, and cattle that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Fire is a likely threat at the Kahikinui population. The individuals within the fence at Kahikinui benefit from management actions; however, the remaining individuals there and on west Maui are threatened by pigs, goats, cattle, and likely threatened by fire. The threats are of a high magnitude because of their severity and are imminent since they are ongoing. Therefore, we retained an LPN of 2 for *C. oxybapha.*

Cyrtandra sessilis (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Cyrtandra sessilis is a shrub found in wet gulch bottoms and slopes of mesic valleys and wet forests on Oahu, Hawaii. This species is known from two populations totaling approximately 80 individuals in Waikane and Hawaii Loa in the Koolau Mountains. *Cyrtrandra sessilis* is threatened by pigs that degrade and/or destroy habitat, by nonnative plants that outcompete and displace it, and by reduced reproductive vigor. Flooding and landslides are likely threats to one population. No on-the-ground conservation efforts have been initiated, but this species is represented in an *ex-situ* collection. Pigs and nonnative plants are found throughout the mesic and wet forest habitat in which *C. sessilis* occurs, making these threats ongoing and imminent. These threats are of high magnitude because of their severity and because they are occurring throughout its limited range. We retained an LPN of 2 for this species.

Dalea carthagenensis floridana (Florida prairie-clover)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Dichanthelium hirstii (Hirsts' panic grass)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. *D. hirstii* is a perennial grass that produces erect leafy flowering stems from May to October. *D. hirstii* occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats and is found at only two sites in New Jersey, one site in Delaware, and one site in North Carolina. While all four extant *D. hirstii* populations are located on public land or privately owned conservation lands, natural threats to the species from encroaching vegetation and fluctuations in climatic conditions remain of concern and may be exacerbated by anthropomorphic factors occurring adjacent to the wetland habitat of the species. Given the low numbers of plants found at each site, even minor changes in the habitat of the species could result in local extirpation. Loss of any known sites could result in a serious protraction of the species' range. However, the most immediate and severe of the threats to this species (i.e., ditching of the Laboundsky Pond site, and encroachment of aggressive vegetative competitors) have been curtailed or are being actively managed by The Nature Conservancy at one New Jersey site and by the Delaware Division of Fish and Wildlife and Delaware Natural Heritage Program at the Assawoman Pond, Delaware site. Based on threats of a high magnitude but low imminence, we retained an LPN of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. *Digitaria pauciflora* occurs in the pineland/prairie ecotones and prairies in Miami-Dade and Monroe Counties, Florida. Pine rocklands in Miami-Dade County have largely been destroyed by residential, commercial, and urban development and agriculture. Most remaining habitat has been negatively altered, and this species has been extirpated from much of its historical range. Two large occurrences remain within Everglades National Park and Big Cypress National Preserve. While privately owned pine rocklands and prairies are at risk to development, the plants on Federal lands are protected from this threat. This grass is threatened by habitat loss and habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and exotic plants. Since the only remaining populations are on lands managed by the National Park Service, the threats of fire suppression and exotics are somewhat reduced. The nearby presence of the exotic Old World climbing fern is of particular concern due to its ability to rapidly spread. In Big Cypress National Preserve, plants are currently threatened by off-road vehicle use. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades has the potential to have a negative effect on the pinelands of Long Pine Key, where a large population occurs. At this time, it is not known whether Everglades restoration will have a positive or negative effect. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Sea level rise will likely be a factor over the long-term. Overall, the magnitude of threats is considered to be high because this species has been extirpated from all pine rocklands in Miami-Dade County outside of Everglades National Park. However, the more significant threats are not currently occurring (Old World climbing fern is not yet in the area where the species is found and the effects of Everglades restoration are unknown at this time), and are, thus, nonimminent. Therefore, we assigned an LPN 5 for this species.

Dubautia imbricata ssp. *imbricata* (Naenae)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Dubautia plantaginea ssp. *magnifolia* (Naenae)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Dubautia waialealae (Naenae)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files and the petition we received on October 30, 2002.

Erigeron lemmonii (Lemmon fleabane)—The following summary is based on information contained in our files and the petition we received in July 1975. The species is known from one site in a canyon in the Fort Huachuca Military Reservation of southeastern Arizona. As of 2006, approximately 950 plants were known from this site. The population had not been inventoried since the 1990s, but a complete assessment was completed in 2006; approximately 500 more plants were located and occupied habitat encompasses about 1 square kilometer.

The threats to this species are from catastrophic wildfire in the canyon and on-going drought conditions. We do not know if this species has any adaptations to fire. Due to its location on cliffs, we suspect that fires that may have occurred at more regular intervals and burned at low intensities may have had little to no effect on this species. It may be that the fire intensity and associated heat is only high enough to damage or kill plants on adjacent cliffs, especially near the ground, when an extended absence results in an accumulated fuel load. Even with an accumulated fuel load, the plants that are much higher on the cliff face probably would not be affected. Ft. Huachuca Military Reservation has indicated a willingness to develop a conservation agreement for this species. The magnitude of threats is moderate, because we believe that not all of the population would be adversely affected by a wildfire or drought. The threats are imminent because the likelihood of a fire is high due to the ongoing drought. We retained an LPN of 8 for this species due to moderate, imminent threats.

Eriogonum codium (Umtanum Desert buckwheat)—The following summary is based on information from our files. No

new information was provided in the petition we received on May 11, 2004. This species is a long-lived, slow-growing, woody perennial plant that forms low dense mats. The known range of the species is a single location along a ridge on federally owned land in the Hanford National Monument in Washington State. Although it is found exclusively on exposed basalt from the Lolo Flow of the Wanapum Basalt Formation, it is unknown if the close association is related to the chemical composition or physical characteristics of the bedrock or other factors. Individual plants may exceed 100 years of age, based on counts of annual growth rings of dead plants. After its discovery in 1995, the population was counted in 1997. This count reported 5,228 living individuals, and by 2005 the figure had dropped to 4,418, representing a 15 percent decline in the population over eight years. A draft population viability analysis based on 9 years of demographic data was recently completed. This study determined that that there is little or no risk of a population decline greater than 90 percent within the next 100 years, but there is a 72 percent chance of a decline of 50 percent over the next century.

The major threats to the species are wildfire, fire-fighting activities, trampling, and invasive weeds. However, the relationship between the current decline in population numbers and the known threats is not clearly understood at this time. With the possible exception of wildfire, the observed decline in population numbers and recruitment since 1997 is not directly attributable to the currently known threats. Because the population is small, limited to a single site, and sensitive to fire and disturbance, the species remains vulnerable to the identified threats. The magnitude of threats is high, because, given the limited range of the species and the degree of uncertainty about its habitat and the cause of its declines, any of the threats could adversely affect its continued existence. The threats are both ongoing and imminent in nature. Because the species continues to be vulnerable to these threats, we assigned an LPN of 2 to this species.

Eriogonum kelloggii (Red Mountain buckwheat)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Red Mountain buckwheat is a perennial herb endemic to serpentine habitat of lower montane forests found between 1,900 and 4,100 feet. Its distribution is limited to the Red Mountain and Little Red Mountain areas of Mendocino County, California, where it occupies 50 acres and 900 square feet, respectively. Occupied habitat at Red Mountain is scattered over 4 square miles. Total population size is estimated at between 20,000 and 30,000 plants, which occur in 44 polygons. Intensive monitoring of permanent plots on three study sites in Red Mountain suggests considerable annual variation in plant density and reproduction, but no discernable population trend was evident in two of three study sites. One study site showed a 65 percent decline in plant density over 11 years.

The primary threat to this species is the potential for surface mining for chromium and nickel. Virtually the entire distribution of Red Mountain buckwheat is either owned by mining interests, or is covered by existing mining claims, that are not currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. The species distribution by ownership is described as follows: Federal (Bureau of Land Management)—69 percent (this portion of the distribution was recently included in the South Fork Eel River Wilderness Area, managed by BLM); State of California—1 percent; and private—30 percent. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and its taxonomy (species), we assigned an LPN of 5 to this species.

Festuca hawaiiensis (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a cespitose (growing in dense, low tufts) annual found in dry forest on the island of Hawaii, Hawaii. *Festuca hawaiiensis* is known from four populations totaling approximately 1,000 individuals in and around the Pohakuloa Training Area on the island of Hawaii. Historically, this species was also found on Hualalai and Puu Huluhulu on Hawaii and possibly Ulupalakua on Maui, but it no longer occurs at these sites. *Festuca hawaiiensis* is threatened by pigs, goats, mouflon, and sheep that degrade and destroy habitat; fire; military training activities; and nonnative plants that outcompete and displace it. Feral pigs, goats, mouflon, and sheep have been fenced out of a portion of the populations of *F. hawaiiensis,* and nonnative plants have been reduced in the fenced areas. Firebreaks have been established at two populations. However, these threats are imminent because they are not controlled and are ongoing in the remaining, unfenced populations. The threats are of a high magnitude because they could adversely affect *F. hawaiiensis* resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Festuca ligulata (Guadalupe fescue)—The following summary is based on information from our files and in the petition we received in 1975. Guadalupe fescue is a member of the Poaceae (Grass family). This species is currently only known from higher elevations in the Chisos Mountains in the Big Bend Area of Texas (one population) and adjacent Coahuila, Mexico (two populations). The population in Big Bend National Park is bisected by a trail and subject to occasional trampling by horses and hikers. The magnitude of threats for Guadalupe fescue is moderate to low because of population monitoring and trail operation by the National Park Service. Based on monitoring results, threats to the U.S. population are nonimminent because of conservation actions at Big Bend National Park to address threats to the species. Thus, we assign an LPN of 11 to this species.

Gardenia remyi (Nanu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Nanu is a tree found in mesic to wet forest on islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is known from 19 populations totaling between 77 and 104 individuals throughout its range. This species is threatened by pigs, goats, and deer that degrade and destroy habitat and possibly prey upon the species, and by nonnative plants that outcompete and displace it. It is also threatened by landslides on the island of Hawaii. This species is represented in an *ex situ* collection. Feral pigs have been fenced out of the west Maui populations of *G. remyi,* and nonnative plants have been reduced in those areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. In addition, the threat from goats and deer is ongoing and imminent, because no goat or deer control measures have been undertaken for any of the populations of *G. remyi.* All of the threats are of a high magnitude because they are significant enough that they could adversely affect the species resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Geranium hanaense (Nohoanu)—See above in ''*Summary of Listing Priority*

Changes in Candidates.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Geranium hillebrandii (Nohoanu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Geranium hillebrandii* is a decumbent subshrub found in bogs on Maui, Hawaii. Previously known from two populations totaling approximately 1,000 to 2,000 individuals, it is currently known, as a result of more thorough surveys, from three populations totaling 10,000 individuals. *Geranium hillebrandii* is moderately threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Conservation measures taken to control feral pigs and nonnative plants reduce the impact of these threats to *G. hillebrandii*; however, continued monitoring will be necessary to keep the areas threat-free. The threats from feral pigs and nonnative plants are, therefore, of a moderate magnitude to this species; however, these threats are imminent because they are ongoing in half of the populations. Therefore, we retained an LPN of 8 for this species.

Geranium kauaiense (Nohoanu)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Gonocalyx concolor (no common name)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. *Gonocalyx concolor* is a small evergreen epiphytic shrub. Currently, *G. concolor* is known only from the dwarf or elfin forest type in the Carite Commonwealth Forest (Cerro La Santa), located in the Sierra de Cayey in the municipalities of Guayama, Cayey, Caguas, San Lorenzo, and Patillas in southeastern Puerto Rico. The population previously reported in the Caribbean National Forest is apparently no longer extant. The limited distribution (i.e., the entire population located at one site) and low population numbers (approximately 172 individuals) of *G. concolor,* habitat destruction from construction of roads and telecommunication towers, certain forest management practices such as the development and maintenance of trails, and potential for catastrophic natural events threaten this species. *Gonocalyx concolor* has a restricted distribution that renders this species vulnerable to natural (e.g., hurricanes, landslides) or manmade (e.g., telecommunication towers, forest management practices) threats to its habitat and population, thus making the threat magnitude high. The Puerto Rico Department of Natural and Environmental Resources developed a management plan for the Carite Commonwealth Forest in 1976. This management plan includes the protection and conservation of species classified under PRDNER regulations as critical, threatened, or endangered. Actions that may impact such species are generally scrutinized, and measures to minimize or avoid impacts to these species are recommended and implemented, if deemed appropriate. Thus, the immediacy of the threats is nonimminent. Therefore, we have assigned an LPN of 5 for the *Gonocalyx concolor*.

Hazardia orcuttii (Orcutt's hazardia)—The following summary is based on information contained in our files and the petition we received on March 8, 2001. *Hazardia orcuttii* is an evergreen shrubby species in the Asteraceae (sunflower family). The erect shrubs are 50–100 centimeters (20–40 inches) high. The only known extant native occurrence of this species in the U.S., is in the Manchester Conservation Area in northwestern San Diego County, California. This site is managed by Center for Natural Lands Management. *Hazardia orcuttii* also occurs at a few coastal sites in Mexico, where it has no conservation standing in Mexico. The occurrences in Mexico are threatened by the rapid rate of coastal development from Tijuana to Ensenada. There are approximately 600 native plants remaining in the U.S. and the population in Mexico is estimated at approximately 1,300 plants. Apparent threats to the U.S. population include pedestrian trampling, on- and off-leash dogs, and creation of bicycle trails near *Hazardia orcuttii* plants. Competition from invasive nonnative plants may pose a threat to the reproductive potential of this species. Another significant threat is the apparently low reproductive output of the species. This stems from a recent study that found that 95 percent of the flowers examined were damaged by insects or fungal agents or aborted prematurely, and that insects or fungal agents damaged 50 percent of the seeds produced. The threats are of a high magnitude because they are significant enough that they could adversely affect the continued existence of the species. Overall, the threats are nonimminent since the species occurs in a protected area where some of the threats are not occurring since they are managed. Therefore, we assigned this species a listing priority of 5.

Hedyotis fluviatilis (Kamapuaa)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Kamapuaa is a scandent shrub found in mixed shrubland to wet lowland forest on Oahu and Kauai, Hawaii. This species is known from 12 populations totaling 800 to 1,200 individuals throughout its range. *Hedyotis fluviatilis* is threatened by pigs and goats that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained an LPN of 2 because the severity of the threats is high and are ongoing so are imminent.

Helianthus verticillatus (Whorled sunflower)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Hibiscus dasycalyx (Neches River rose-mallow)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Neches River rose-mallow is a perennial woody herb growing 1–2 meters tall with one or more stems per clump and white flowers 7.5–15 centimeters wide, consisting of five 5–10 centimeter-long white petals with deep red or purple at the base. The Neches River rose-mallow appears to be restricted to wetlands, or those portions of wetlands that are exposed to open sun and normally hold standing water early in the growing season, with water levels dropping during late summer and fall. This species appears to have community dominance within the narrow band between high and low water levels in wetlands exposed to open sun. However, historical habitat has been affected by drainage or filling of floodplain depressions and oxbows, stream channelization, road construction, timber harvesting, agricultural activities (primarily mowing and grazing), and herbicide use. Threats that continue to potentially affect the species include wetland alteration, herbicide use, grazing, mowing during the species' growing and flowering period, and genetic swamping by other *Hibiscus* species.

A 1995 status survey of 10 counties resulted in confirmation or discovery of the species in only three sites, but in three separate counties and three different watersheds, suggesting a

relatively wide historical range. These three populations—Ponta site in Cherokee County, Lovelady in Houston County, and Highway 94 in Trinity County—were all within highway rights-of-way and somewhat protected by a management agreement between Texas Parks and Wildlife Department and Texas Department of Transportation. Because these sites were still vulnerable to herbicides and adjacent agricultural activities, they supported relatively low population numbers: In 2005, Ponta (Highway 204) had declined to 0 plants; Lovelady (Highway 230), to 0 plants; and Highway 94, to 20 plants. Continued surveys for *H. dasycalyx* have resulted in new populations. About 300 plants were found on land owned by the Temple-Inland Corporation in east Trinity County. A Candidate Conservation Agreement was developed for this site, but smaller plant numbers have been seen in recent years, possibly due to changes in the wetland's hydrology. Another site discovered on land previously owned by Champion International Corporation (near White Rock Creek in west Trinity County) once supported 300–400 plants. However, the status of this population is currently unknown due to a change in ownership.

In west Houston County, a population of 300 to 400 plants discovered on private land has been purchased by the Natural Area Preservation Association, a land trust organization, in order to protect this land in perpetuity. In east Houston County, a population discovered in Compartment 55 in Davy Crockett National Forest numbered over 1,000 in 2006. Davy Crockett National Forest represents the only public land within the range of *H. dasycalyx*. In 2000, nearly 800 plants were introduced into Compartments 16 and 20 of Davy Crockett National Forest as part of a reintroduction effort. One population has retained high numbers (350 in 2006), but the second was affected by a change in hydrology and has declined to 50 plants in 2006. In 2004, 200 plants were placed in a wetland in Compartment 11 of Davy Crockett National Forest. This attempt has not been successful; only 10 plants were seen in 2006 and all showed evidence of wilt and insect predation. Four unconfirmed reports of the Neches River rose-mallow in Davy Crockett National Forest will be investigated in 2008.

The threats to the species continue to be of a high magnitude because they can severely affect the survival and reproductive capacity of the species. Overall the threats are nonimminent since they are not currently affecting or likely to affect the majority of the populations of this species in the immediate future. Thus, we have retained an LPN of 5 for the Neches River rose-mallow.

Indigofera mucronata keyensis (Florida indigo)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Florida indigo occurs in coastal rock barrens, ecotone rock barren areas, and scraped areas mimicking rock barren habitat. Based upon available data, there are 12 occurrences of Florida indigo on eight islands in the upper and middle Florida Keys, in Monroe County; half of the original occurrences in the Keys are now extirpated, as are historic occurrences on mainland Florida in Collier and Miami-Dade Counties. Most occurrences are small; total population size is probably close to 3,000 individuals. One of the largest occurrences (500 individuals) is on private lands. Florida indigo is threatened by habitat loss, even on public lands, as well as habitat loss and degradation from exotic plants on all sites. Shading by hardwoods is a problem at approximately half of the sites. Planned restoration activities, illegal dumping, and trespass have also been identified as threats. Florida indigo is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges; however, these factors may also work to maintain coastal rock barren habitat in the long-term. Sea level rise is considered a long-term threat that will continue. Overall, the threats are moderate in magnitude because most populations occur on public land where there is some work being done to manage for this species. The threats are ongoing, and therefore, imminent. Thus, we assigned an LPN of 9 to this plant variety.

Ivesia webberi (Webber ivesia)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ivesia webberi* is a low, spreading, perennial herb that occurs very infrequently in Lassen, Plumas, and Sierra Counties, California, and in Douglas and Washoe Counties, Nevada. The species is restricted to sites with sparse vegetation and shallow, rocky soils composed of volcanic ash or derived from andesitic rock. Occupied sites generally occur on mid-elevation flats, benches, or terraces on mountain slopes above large valleys along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin Desert. Currently, the global population is estimated at approximately 4.8 million individuals at 15 known sites. The Nevada sites support nearly 98 percent of the total number of individuals (4.7 million) on about 30 acres of occupied habitat. The California sites are larger in area, totaling about 156 acres, but support fewer individuals (approximately 115,000).

The primary threats to Webber ivesia include urban development, authorized and unauthorized roads, off-road vehicle activities and other dispersed recreation, livestock grazing and trampling, fire and fire suppression activities including fuels reduction and prescribed fires, and displacement by noxious weeds. Despite the high numbers of individuals, observations in 2002 and 2004 confirmed that direct and indirect impacts to the species and its habitat, specifically from urban development and off-highway vehicle activity remain high and are likely to increase. The threats are therefore of a high magnitude. However, the U.S. Forest Service has committed to develop a conservation strategy and monitoring program to protect this species on National Forest lands, and the State of Nevada has listed the species as critically endangered, which provides a mechanism to track future impacts on private lands. In addition, both the Forest Service and State of Nevada have agreed to coordinate closely on all activities that may affect this species. For these reasons, we determined that the threats to Webber ivesia are nonimminent and we maintained an LPN of 5 for this species.

Joinvillea ascendens ssp. *ascendens* (Ohe)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Ohe is an erect herb found in wet to mesic *Metrosideros polymorpha-Acacia koa* (ohia-koa) forest on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. *Joinvillea ascendens* ssp. *ascendens* is known from 37 populations totaling approximately 200 individuals throughout its range. Plants are typically found as only one or two individuals, with miles between populations. This subspecies is threatened by pigs, goats, and deer that degrade and destroy habitat, and by nonnative plants that outcompete and displace native plants. Predation by pigs, goats, deer, and rats is a likely threat to this species. Seedlings have rarely been observed in the wild. Seeds germinate in cultivation, but most die soon thereafter. It is uncertain if this rarity of reproduction is typical of this subspecies, or if it is related to habitat disturbance. Feral pigs

have been fenced out of a few of the populations of *J. ascendens* ssp. *ascendens,* and nonnative plants have been reduced in a few populations that are fenced. However, these threats are not controlled and are ongoing in the remaining, unfenced populations. The threats to this species are of high magnitude because habitat degradation, nonnative plants and predation could affect the ability of the species to survive. The threats are on-going, and thus are imminent. Therefore, we retained an LPN of 3 for this subspecies.

Keysseria erici (no common name)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Keysseria helenae (no common name)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Korthalsella degeneri (Hulumoa)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Hulumoa is a parasitic subshrub found on two species of native trees, *Sapindus oahuensis* and *Nestegis sandwicensis*, only in diverse mesic forests on Oahu, Hawaii. Recent surveys indicate that the species is known only from one population of 900 to 1,000 individuals in Makua Valley. *Korthalsella degeneri* is threatened by pigs and goats that degrade and destroy habitat, fire, and nonnative plants that outcompete and displace native plants. Goats and pigs may prey upon the plant species *K. degeneri* is dependent on. Goats and pigs have been partially fenced out of the area in Makua Valley where *K. degeneri* currently occurs, but some goats are still present. Fires resulting from military activities have been minimized but not completely eliminated. Threats continue to be of a high magnitude and imminent, because they are ongoing and because of the potential for the elimination of the only known population by a single fire event. Therefore, we retained an LPN of 2 for this species.

Labordia helleri (Kamakahala)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Labordia pumila (Kamakahala)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Leavenworthia crassa (Gladecress)—The following information is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species of gladecress is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, Alabama, where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full, or near full, sunlight with limited herbaceous competition. The magnitude of threat is high for this species, because with the limited number of populations, the threats could result in direct mortality or reduced reproductive capacity of the species. The immediacy of threat is nonimminent since there are no known projects planned that would destroy any sites and the species is able to withstand some disturbance. Thus, we assigned an LPN of 5 to this species.

Leavenworthia texana (Texas golden gladecress)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. The Texas golden gladecress is a small annual member of the mustard family, with deep, yellow petals only 7–10 mm long; flowering is February through March. The gladecress occurs only on the Weches outcrops of east Texas in San Augustine and Sabine counties. The Weches geologic formation consists of a layer of calcareous sediment, lying above a layer of glauconite clay deposited up to 50 million years ago. Erosion of this complex has produced topography of steep, flat-topped hills and escarpments, as well as the unique ecology of Weches glades: islands of thin, loamy, seepy, alkaline soils that support open-sun, herbaceous, and highly diverse and specialized plant communities.

The gladecress was historically recorded at eight sites, all in a narrow region along north San Augustine and Sabine counties, following the Weches formation. All sites are on private land. Two historic locations have been lost to glauconite mining. A nearby glauconite mine has probably altered the water regime at another historic site. Two sites are currently closed to visitors, so biologists could not evaluate the number of plants they could support. However, the Sabine County site supported 1000 plants within 9 square meters in 2007. The Tiger Creek site in San Augustine County (less than 0.1 ha in size) was found to have about 200 gladecress in 2007. The Kardell site (less than 9 square meters) has supported 400–500 plants in past years, but none in 2005. An introduced population in Nacogdoches County numbered about 1000 within an area of about 18 square meters in 2007.

Historic gladecress habitat has been affected by highway construction, residential development, conversion to pasture and cropland, widespread use of herbicide, overgrazing, and glauconite mining. However, the primary threat to existing gladecress populations is the invasion of nonnative and weedy shrubs and vines (primarily Macartney rose (*Rosa bracteata*) and Japanese honeysuckle (*Lonicera japonica*)). All known sites are undergoing severe degradation by the incursion of nonnative shrubs and vines, which restrict both growth and reproduction of the gladecress. Brushclearing carried out in 1995 resulted in the reappearance of gladecress after a 10-year absence at one site. However, nonnative shrubs have again invaded this area. More effective control measures, such as burning and selective herbicide use, need to be tested and monitored. The small number of known sites also makes the gladecress vulnerable to extreme natural disturbance events. A severe drought in 1999 and 2000 had a pronounced adverse effect on gladecress reproduction. Since the threat from nonnative plants severely affects all known sites, the magnitude is high. The threats are imminent since they are ongoing. Therefore, we retain an LPN of 2 for the Texas golden gladecress.

Lesquerella globosa (Desvaux) Watson (Short's bladderpod)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Short's bladderpod is a perennial member of the mustard family that occurs in Indiana (1 location), Kentucky (6 locations), and Tennessee (18 locations). It grows on steep, rocky, wooded slopes, talus areas, along cliff tops and bases, and on cliff ledges. It is usually associated with south to west facing calcareous outcrops adjacent to rivers or streams. Road construction and road maintenance have played a significant role in the decline of *Lesquerella globosa*. Specific activities that have affected the species in the past and potentially threaten it now, include bank stabilization, herbicide use, mowing during the growing season, grading of road shoulders, and road

widening or repaving. Sediment deposition during road maintenance or from other activities also potentially threatens the species. Interruption of natural processes that maintained habitat suitability and competition from invasive nonnative vegetation necessitates active habitat management at many locations. Given the number of threats that could adversely affect the ability of this species to survive, the magnitude of threat is high. Based upon the number of populations and the anticipation that most of these threats will not be realized in the next 1–2 years, the threats are nonimminent. We have therefore assigned an LPN of 5 to this species.

Linum arenicola (Sand flax)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. Based upon available data, there are 10 extant occurrences of sand flax; 11 others are extirpated or destroyed. Only small and isolated occurrences remain in a restricted range of southern Florida and the Florida Keys. Habitat loss and degradation due to development is a major threat—most of the remaining occurrences are on private land or non-conservation public land. However, much of the pine rocklands on Big Pine Key are protected. Nearly all remaining populations are threatened by fire suppression, difficulty in applying prescribed fire, road maintenance activities, exotic species, or illegal dumping. However, some efforts are underway to use prescribed fire and control exotics on conservation lands. Sand flax is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges; Hurricane Wilma inundated most of its habitat on Big Pine Key in 2005, and plants were not found 8–9 weeks post-storm. We also consider sea level rise to be a substantial threat that will reduce the extent of upland habitats. Due to the small and fragmented nature of the current population, stochastic events, disease, or genetic bottlenecks may strongly affect this species. Reduced pollinator activity and suppression of pollinator populations from pesticides used in mosquito control and decreased seed production due to increased seed predation in a fragmented wildland-urban interface may also affect sand flax; however, not enough information is known on this species' reproductive biology or life history to assess these potential threats. Viability is uncertain. Overall, the magnitude of threats is high and most threats are ongoing and thus are imminent. Therefore, we assigned an LPN of 2 to this species.

Linum carteri var. *carteri* (Carter's small-flowered flax)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. This plant occupies open sites in pinelands of Miami-Dade County, Florida. Occurrences with fewer than 100 individuals are located on three county-owned preserves. An occurrence with more than 100 plants is on a non-conservation site owned by the U.S. government. The 10 existing occurrences are small and vulnerable to habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Non-compatible management practices are also a threat at most protected sites; several sites are mowed during the flowering and fruiting season. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. This species exists in such small numbers at so few sites, that it may be difficult to develop viable occurrences on the available conservation lands. Although no population viability analysis has been conducted for this plant, indications are that existing occurrences are at best marginal and none are truly viable. As a result, the magnitude of threats is high. Because no viable populations of this plant exist, threats are imminent, so we assigned an LPN of 3 to this plant variety.

Lysimachia daphnoides (Lehua makanoe)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Melicope christophersenii (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Melicope christophersenii* is a long-lived perennial shrub or tree found in *Metrosideros tremuloides* montane wet forest in the Waianae Mountains on Oahu, Hawaii. Currently, this species is known from one wide-spread area totaling approximately 300 individuals. *Melicope christophersenii* is threatened by feral pigs that may eat it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The black twig borer may pose a threat to *M. christophersenii* because it is known to infest other species of *Melicope* on Oahu and it occurs throughout the Waianae Mountains. Only a few individuals may benefit from fencing that the U.S. Army has constructed. The threats to *M. christophersenii* from feral pigs, nonnative plants, and the black twig borer are imminent and of a high magnitude because they represent severe threats to the species throughout its limited range and they are ongoing; therefore, we retained an LPN of 2 for this species.

Melicope degeneri (Alani)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Melicope hiiakae (Alani)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Melicope makahae (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Melicope makahae* is a shrub or shrubby tree found in mesic forest in the Waianae Mountains on Oahu, Hawaii. Currently *M. makahae* is known from two populations on two discrete ridges, totaling approximately 200 individuals. This species is threatened by goats and pigs that degrade and destroy habitat, and likely prey upon the plants, and nonnative plants that compete for light and nutrients. The black twig borer is a likely threat to *M. makahae,* because it is known to infest other species of *Melicope* on Oahu and it occurs throughout the Waianae Mountains. Portions of both populations are within fenced and managed areas; however, the threats to *M. makahae* from goats, pigs, nonnative plants, and the black twig borer are of a high magnitude because they pose a severe threat to all unmanaged individuals range-wide. The threats are imminent, since they are ongoing. Therefore, we retained an LPN of 2 for this species.

Melicope paniculata (Alani)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Melicope puberula (Alani)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Myrsine fosbergii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Myrsine fosbergii* is a branched shrub or small tree found in cloud swept ridges and wet forest on Kauai and Oahu, Hawaii. This species is currently known from 9 populations totaling approximately 56 individuals on Kauai and from 8 populations totaling between

73 and 83 individuals in the Koolau mountains of Oahu. *Myrsine fosbergii* is threatened by feral pigs and goats that degrade and destroy habitat and may prey upon the plant, and nonnative plants that compete for light and nutrients. Although there are plans to fence and remove ungulates from the Helemano area of Oahu, which may benefit this species, no conservation measures have been taken to date to alleviate these threats for this species. Feral pigs and goats are found throughout the known range of *M. fosbergii,* as are nonnative plants. The threats from feral pigs, goats, and nonnative plants are of a high magnitude because they pose a severe threat throughout the limited range of this species and are on-going and therefore imminent. We retained an LPN of 2 for this species.

Myrsine mezii (Kolea)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Myrsine vaccinioides (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Myrsine vaccinioides* is a small branched shrub found in shrubby bogs on Maui, Hawaii. This species is found scattered throughout the bogs of west Maui, totaling fewer than 1,000 individuals. *Myrsine vaccinioides* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Pig exclusion fences protect some individuals of this species, and nonnative plants have been reduced around some individuals that are fenced. However, these ongoing conservation efforts benefit only a small number of the known individuals. Further, nonnative plants will probably never be completely eradicated because new propagules are constantly being dispersed into the fenced areas from surrounding, unmanaged lands. The threats are of a high magnitude because they pose a severe threat throughout the limited range of the species and are ongoing, and thus imminent. Therefore, we retained an LPN of 2 for this species.

Narthecium americanum (Bog asphodel)—The following summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004. Bog asphodel is a perennial herb that is found in savannah areas, usually with water moving through the substrate, as well as in sandy bogs along streams and rivers. The historic range of bog asphodel include New York, New Jersey, Delaware, North Carolina, and South Carolina, but is now only found within the Pine Barrens region of New Jersey.

As an obligate wetland species, *N. americanum* is threatened by changes in hydrology, loss of habitat due to filling or draining of wetlands, flooding as a result of reservoir construction, and conversion of natural wetlands to commercial cranberry bogs. This species occurs in the Pine Barrens region, and the Pinelands Commission issues the State-assumed Clean Water Act Section 404 permits. The Pinelands Commission grants wetland exemptions to cranberry production and other agricultural uses. Illegal wetland filling is occurring. For example, a cranberry expansion was illegally completed without a State permit. In addition, activities not needing State or federal permits are occurring in uplands that are indirectly affecting the wetlands. Natural succession of vegetation in wetlands supporting bog asphodel from emergent (herbaceous) to forested wetlands may also be contributing to the decline of the species. Suppression of natural wildfires that would retard succession or created open wetland savannahs may be a factor in the decline of the species. Other factors adversely affecting *N. americanum* include trampling, erosion, and siltation caused by recreationists on foot or using off-road vehicles. Approximately 70 percent of known extant populations occur on State-owned lands. We are working with the New Jersey Department of Environmental Protection to abate known moderate threats at these sites from recreational use and erosion. Approximately 30 percent of the known extant sites are on privately owned lands, many of which are threatened by habitat degradation from on-site or adjacent residential or commercial development. Overall, the threats are moderate due to the protection provided by the State on State-owned lands. The threats are ongoing and therefore are imminent. Therefore, we retained an LPN of 8 for this species.

Nothocestrum latifolium (Aiea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Aiea is a small tree found in dry to mesic forest and diverse mesic forests on Kauai, Oahu, Maui, Molokai, and Lanai, Hawaii. *Nothocestrum latifolium* is known from 19 populations totaling fewer than 1,100 individuals. This species is threatened by feral pigs, goats and axis deer that degrade and destroy habitat and may prey upon it, by nonnative plants that compete for light and nutrients, and by the loss of pollinators that negatively affect the reproductive viability of the species. Ungulates have been fenced out of some areas where *N. latifolium* currently occurs, and nonnative plants have been reduced in some populations that are fenced. However, these ongoing conservation efforts for this species benefit only a few of the known populations. The threats are not controlled and are ongoing in the remaining unfenced populations. In addition, little regeneration is observed in this species. Therefore, the threats are of a high magnitude since they are severe enough to affect the continued existence of the species. The threats are imminent since they are ongoing. Therefore, we retained an LPN of 2 for this species.

Ochrosia haleakalae (Holei)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Holei is a tree found often on lava in dry to mesic forest on the islands of Hawaii and Maui, Hawaii. This species is currently known from 9 wild and outplanted populations totaling fewer than 500 individuals. *Ochrosia haleakalae* is threatened by fire; by feral pigs, goats, and cattle that degrade and destroy habitat and may directly prey upon holei; and by nonnative plants that compete for light and nutrients. Feral pigs, goats, and cattle have been fenced out of one wild and one outplanted population on private lands on the island of Maui and one outplanted population in Hawaii Volcanoes National Park on the island of Hawaii. Nonnative plants have been reduced in the fenced areas. No known conservation measures have been taken to date for the other populations on the islands of Maui and Hawaii. The threat from fire is of a high magnitude and imminent because no control measures have been undertaken to address this threat that could adversely affect *O. haleakalae* as a whole. The threats from feral pigs, goats, and cattle are ongoing to the unfenced populations of *O. haleakalae.* The threat from nonnative plants is ongoing and imminent, and of a high magnitude to the wild populations on both islands since this threat has the potential to adversely affect the continued existence of this species. Therefore, we retained an LPN of 2 for this species.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Fickeisen plains cactus is a small

cactus known from the Gray Mountain vicinity to the Arizona strip in Coconino and Mohave counties, Arizona. The cactus grows on exposed layers of Kaibab limestone on canyon margins and well-drained hills in Navajoan desert or grassland. In 1999, Arizona Game and Fish Department noted 23 occurrences of the species, including historical ones. The species is located on Bureau of Land Management, U.S. Forest Service, tribal, and possibly State lands. Recent reports from the Bureau of Land Management and Navajo Nation describe populations of the species as being in decline.

The main human-induced threats to this cactus are off-road vehicles and trampling associated with livestock grazing. Monitoring data has detected mortality associated with livestock grazing. Illegal collection of this species has been noted in the past, but we do not know if it is a continuing threat. The populations that have been monitored have been affected, in part, by the continuing drought. There has been very low recruitment, and rabbits and rodents have consumed adult plants since there is reduced forage available during these dry conditions. The threats are high magnitude because they adversely affect the plant resulting in direct mortality or reduced reproductive capacity. The threats are imminent because they are ongoing. The LPN for this plant variety remains a 3.

Penstemon debilis (Parachute beardtongue)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Penstemon debilis* is an extremely rare plant endemic to oil shale outcrops on the Roan Plateau escarpment in Garfield County, Colorado. Total estimated number of plants is approximately 3800 individuals. About 62 percent of the plants are on private land owned by Occidental Petroleum. Most of the remaining 38 percent occur in one population on Bureau of Land Management land that will soon be open to leasing under a new Resource Management Plan amendment. Pressure to develop energy reserves in this area is intense. Threats include habitat destruction caused by heavy equipment use of access roads through plant populations. These threats are high magnitude because they present a significant threat to the parachute beardtongue resulting in direct mortality or reduced reproductive capacity. We maintained an LPN 2 for this species based on a dramatic increase in the intensity of energy exploration in the last three years along the Roan Plateau escarpment.

Penstemon scariosus var. *albifluvis* (White River beardtongue)—The following summary is based on information contained in our files and the petition we received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are 14 occurrences known in Utah and 1 in Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. Recreational off-road vehicle use, heavy grazing by livestock, and wildlife and livestock trampling are additional threats. Based on current information, we retained an LPN of 6 because these nonimminent threats present a significant risk to this plant variety.

Peperomia subpetiolata (Ala ala wai nui)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Ala ala wai nui is a short-lived perennial herb found in montane mesic forest on Maui, Hawaii. This species is known from one occurrence consisting of two subpopulations on windward east Maui, totaling 23 individuals. Further study of the occurrence indicates that the plants may actually represent clones of only six genetically distinct individuals. *Peperomia subpetiolata* is threatened by feral pigs that may eat this plant and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Individuals that occur within the Waikamoi Preserve may benefit from fencing and management actions; however, all of the threats occur range-wide. We retained an LPN of 2 because the threats are of a high magnitude because they pose a significant threat to the species resulting in direct mortality or reduced reproductive capacity, and are ongoing so are imminent.

Phacelia submutica (DeBeque phacelia)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. DeBeque phacelia is an annual flowering plant endemic to clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation in Mesa and Garfield Counties, Colorado. There are approximately 40 populations, all less than five acres. The number of plants varies from none to thousands each year, depending on precipitation. The habitat coincides with high quality oil and gas reserves of the Piceance Basin, mostly on federal lands. The primary threats are gas field development and associated construction and transportation activities, as well as increased access for all-terrain vehicles. Substantial surface disturbance alters the unique soil structure and destroys seed banks that are critical to the survival of this species. These threats are ongoing, therefore imminent. They are of moderate magnitude because the threat from oil and gas construction and transportation activities only affects a little over half of the land area where this plant occurs. We retained an LPN of 8 for this species.

Phyllostegia bracteata (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Phyllostegia bracteata* is a scandent perennial herb found in *Metrosideros-Cheirodendron-Dicranopteris* (ohia-olapa-uluhe) montane wet forest. Currently this species is known from five populations totaling no more than 19 individuals on east and west Maui. *Phyllostegia bracteata* is threatened by feral pigs that may directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and reduced reproductive vigor and randomly occurring natural events. The threats to *P. bracteata* from pigs and nonnative plants are of a high magnitude and imminent because in light of their severity, they pose a risk to the species range-wide, are ongoing, and are not subject to any control efforts. Therefore, we retained an LPN of 2 for this species.

Phyllostegia floribunda (no common name)—See above in *''Summary of Listing Priority Changes in Candidates.''* No new information was provided in the petition we received on May 11, 2004.

Phyllostegia hispida (no common name)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Physaria tuplashensis (White Bluffs bladder-pod)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. White Bluffs bladder-pod is a low-growing, herbaceous, short-lived, perennial plant in the Brassicaceae (mustard) family. Historically and currently, White Bluffs

bladder-pod has only been known from a single population that occurs along the White Bluffs of the Columbia River in Franklin County, Washington. The entire range of the species is a narrow band, approximately 33 feet (10 meters) wide by 10.6 miles (17 kilometers) long, at the upper edge of the bluffs. The species occurs only on cemented, highly alkaline, calcium carbonate paleosol (a ''caliche'' soil) and is believed to be a ''calciphile.'' Approximately 35 percent of the known range of the species has been moderately to severely affected by landslides, an apparently permanent destruction of the habitat. The entire population of the species is down-slope of irrigated agricultural land, the source of the water seepage causing the mass failures and landslides. Other significant threats include the presence of invasive plants, and some potential use of the habitat by recreational off road vehicles. While *P. tuplashensis* is inherently vulnerable because it is a narrow endemic, the threats are nonimmient since they are unlikely to occur in the immediate future, except the threat from invasive plants. Invasive plants are present in the vicinity, but have not yet been described as a significant problem. Currently, we know of no plans to expand or significantly modify the existing agriculture activities in areas adjacent to the population. In addition, deliberate modification of the species' immediate habitat is unlikely due to its location and 85 percent Federal ownership. However, because the threats could negatively affect the only known population of this species, the threats are high in magnitude. Therefore we assigned an LPN of 5 to this species.

Pittosporum napaliense (Hoawa)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Platanthera integrilabia (Correll) Leur (White fringeless orchid)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Platanthera integrilabia* is a perennial herb that grows in partially, but not fully, shaded, wet, boggy areas at the head of streams and on seepage slopes in Alabama, Georgia, Kentucky and Tennessee. Historically, there were at least 90 populations of *Platanthera integrilabia.* Currently there are only 53 extant sites supporting the species.

Several populations have been lost to road, residential and commercial construction, and to projects that altered soil and site hydrology and thereby reduced site suitability for the species. Several of the known populations are in or adjacent to powerline rights-of-way. Mechanical clearing of these areas may benefit the species by maintaining adequate light levels; however, the use of herbicides could pose a significant threat to the species. All-terrain vehicles have damaged several sites and pose a threat to most sites. Most of the known sites for the species occur in areas that are managed specifically for timber production. Timber management is not necessarily incompatible with the protection and management of the species. However, care must be taken during timber management to ensure that the hydrology of the bogs that supports the species is not altered. Natural succession can result in decreased light levels. Because of the dependence of the species upon moderate to high light levels, some type of active management to prevent complete canopy closure is required at most locations. Collecting for commercial and other purposes is a threat. Herbivory (primarily deer) threatens the species at several sites. Protection and recovery of this species is dependent upon active management rather than just preservation of its habitat. Invasive, nonnative plants such as Japanese honeysuckle and kudzu threaten several sites. Given the number and severity of current threats to this species, the magnitude of threat is high. Based upon the number of populations and the anticipation that most of these threats will not be realized in the next 1–2 years, the threats are nonimminent. We, therefore, assigned an LPN of 5 to this species.

Platydesma cornuta var. *cornuta* (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This variety is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from 9 populations with a combined total of approximately 36 individuals in the Koolau Mountains on the island of Oahu. Limited monitoring has shown that this population is declining. The threats to *P. cornuta* var. *cornuta* include feral pigs that degrade and destroy habitat and possibly prey upon it, and nonnative plants that compete for light and nutrients. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained an LPN of 3 for this variety. The threats are of a high magnitude because they are sufficiently severe to result in direct mortality or significantly reduce the reproductive capacity of this plant variety. In addition, they are ongoing, so are imminent.

Platydesma cornuta var. *decurrens* (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This variety is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from several populations totaling a few hundred individuals in the Waianae Mountains. *Platydesma cornuta* var. *decurrens* is threatened by feral pigs and goats that degrade and destroy habitat and possibly prey upon the plants, and by nonnative plants that compete for light and nutrients. All of the threats occur range-wide, and no efforts for their control or eradication are being undertaken, other than the current protection of 5 individuals within a fenced enclosure maintained by The Nature Conservancy of Hawaii. We retained an LPN of 3 for this variety. The threats are high in magnitude because the threats are sufficiently severe to result in direct mortality or significantly reduce the reproductive capacity of this plant variety particularly given its small population size. In addition, the threats are ongoing, so are imminent.

Platydesma remyi (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Platydesma remyi* is a shrub or shrubby tree found in wet forests on old volcanic slopes on the island of Hawaii, Hawaii. This species is known from two populations totaling fewer than 50 individuals. *Platydesma remyi* is threatened by feral pigs and cattle that degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. Only one individual is included in a rare plant exclosure in the Laupahoehoe Natural Area Reserve. These threats are ongoing and therefore imminent, and of a high magnitude because of their severity; the threats cause direct mortality or significantly reduce the reproductive capacity of the species throughout its limited range. Therefore, we retained an LPN of 2 for this species.

Platydesma rostrata (Pilo kea lau lii)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Pleomele forbesii (Hala pepe)—The following summary is based on

information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Pleomele forbesii* is a tree found in diverse mesic and dry forests on Oahu, Hawaii. This species is currently known from 16 populations totaling 500 individuals. *Pleomele forbesii* is threatened by predation by rats, habitat degradation and destruction by feral pigs and goats, fire, and nonnative plants that compete for light and nutrients. One population is protected within a fenced area by the U.S. Navy and the species is represented in an ex situ collection; however, no other conservation efforts are being implemented to alleviate the threats to *P. forbesii*. The threats are of a high magnitude because of their severity and their potential to adversely affect this plant throughout its range in all 16 populations. The threats are ongoing and therefore, imminent. Thus, we retained an LPN of 2 for this species.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—The following summary is based on information contained in our files; the petition we received on May 11, 2004, provided no additional information on the species. Soldier Meadow cinquefoil is a low-growing, rhizomatous, herbaceous perennial that is associated with alkali meadows, seeps, and occasionally marsh habitats bordering perennial thermal springs, outflows, and meadow depressions. In Humboldt County, Nevada, the species is known only from Soldier Meadow. In northeastern California, a single population occurs in Lassen County. At Soldier Meadow, there are 10 discrete known occurrences within an area of about 70 acres that support about 130,000 individuals. The California population occupies less than an acre on private lands and supports fewer than 1,000 plants.

The species and its habitat are threatened by recreational use in the areas where it occurs, as well as the ongoing impacts of past water diversions and livestock grazing and current off-highway vehicle travel. Conservation measures implemented recently by the Bureau of Land Management include the installation of fencing to exclude livestock, wild horses, burros and other large mammals; closing of access roads to spring, riparian, and wetland areas and the limiting of vehicles to designated routes; the establishment of a designated campground away from the habitats of sensitive species; the installation of educational signage; and, an increased staff presence, including law enforcement and a volunteer site steward during the six-month period of peak visitor use. These conservation measures have reduced the magnitude of threat to the species to moderate; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts. Until a monitoring program is in place that allows us to assess the long-term trend of the species, we continue to assign this species an LPN of 11.

Pritchardia hardyi (Loulu)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Pseudognaphalium (*Gnaphalium*) *sandwicensium* var. *molokaiense* (Enaena)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Pseudognaphalium sandwicensium* var. *molokaiense* is a perennial herb found in strand vegetation in dry consolidated dunes on Molokai and Maui, Hawaii. This variety is known from a total of four populations with several hundred individuals in the Moomomi area on the island of Molokai, and a single population of 25 individuals at Puu Kahulianapa on west Maui. *Pseudognaphalium sandwicensium* var. *molokaiense* is threatened by axis deer and cattle that degrade and destroy habitat and possibly prey upon it, and by nonnative plants that compete for light and nutrients. Potential threats also include collection for lei and off-road vehicles that directly damage plants and degrade habitat. While ungulate exclusion fences protect the three populations of *P. sandwicensium* var. *molokaiense* on Molokai and nonnative plant control has been implemented in these populations, no conservation efforts have been initiated to date for the individuals on Maui. The ongoing threats from axis deer, cattle, nonnative plants, collection, and off-road vehicles are of a high magnitude because no control measures have been undertaken for the Maui population and the threats therefore pose a significant threat to this plant. Therefore, we retained an LPN of 3 for this variety.

Psychotria grandiflora (Kopiko)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Psychotria hexandra ssp. *oahuensis* var. *oahuensis* (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Psychotria hexandra* ssp. *oahuensis* var. *oahuensis* is a tree or shrub found in mesic and wet forests on Oahu, Hawaii. This variety is known from three populations of fewer than 20 individuals. Two other varieties of this subspecies, var. *hosakana* and var. *rockii*, are extinct. *Psychotria hexandra* ssp. *oahuensis* var. *oahuensis* is threatened by feral pigs and rats that consume this plant and degrade and destroy habitat, rats that consume its fruit, and nonnative plants that compete for light and nutrients. All of the threats occur range-wide, and no efforts for their control or eradication are being undertaken. We retained an LPN of 3 because the threats are of a high magnitude because they could adversely affect this plant variety resulting in direct mortality or reduced reproductive capacity, and are ongoing, so are imminent.

Psychotria hobdyi (Kopiko)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Pteralyxia macrocarpa (Kaulu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Kaulu is a tree found in valleys and slopes in diverse mesic forest on Oahu, Hawaii. This species is known from 20 populations totaling less than 300 individuals. This species is threatened by feral pigs and goats that degrade and destroy habitat; nonnative plants that compete for light and nutrients; and possibly by predation from feral pigs, goats, rats, and the two-spotted leafhopper. These threats are of a high magnitude because in light of their severity and the absence of control or eradication efforts, they have the potential to adversely affect this plant species throughout its limited range. The threats are also imminent because they are ongoing. We retained an LPN of 2 for this species.

Ranunculus hawaiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus hawaiensis* is an erect or ascending perennial herb found in mesic to wet forest dominated by *Metrosideros polymorpha* and *Acacia koa* with scree substrate on Maui and the island of Hawaii, Hawaii. Populations formerly within Haleakala National Park have been extirpated. This species is known from fewer than 300 individuals in six populations. Four wild populations occur on Hawaii, and three outplanted populations and two wild populations occur on Maui, one on east Maui at Kahikinui and one on west

Maui at Lihau. *Ranunculus hawaiensis* is threatened by direct predation by slugs, feral pigs, goats, cattle, mouflon, and sheep; by pigs, goats, cattle, mouflon and sheep that degrade and destroy habitat; and by nonnative plants that compete for light and nutrients. Three populations have been outplanted into protected exclosures; however, feral ungulates and nonnative plants are not controlled in the remaining, unfenced populations. In addition, the threat from slugs is of a high magnitude because slugs occur throughout the limited range of this species and no effective measures have been undertaken to control them or prevent them from causing significant adverse impacts to this species. Therefore, the threats from pigs, goats, cattle, mouflon, sheep, slugs, and nonnative plants are of a high magnitude and ongoing and imminent for *R. hawaiensis*. We retained an LPN of 2 for this species.

Ranunculus mauiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus mauiensis* is an erect to weakly ascending perennial herb found in open sites in mesic to wet forest and along streams on the islands of Maui, Kauai, and Molokai, Hawaii. This species is currently known from fewer than 200 individuals on Molokai, more than 100 individuals on Maui, and approximately 76 individuals on Kauai. *Ranunculus mauiensis* is threatened by feral pigs, goats, deer and slugs that consume it; by habitat degradation and destruction by feral pigs, goats and deer; and by nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of the Maui populations of *R. mauiensis*, and nonnative plants have been reduced in the fenced areas. One individual occurs in the Kamakou Preserve on Molokai, managed by The Nature Conservancy of Hawaii. However, these ongoing conservation efforts benefit only the Maui and Molokai individuals and absent conservation efforts for the Kauia individuals, these threats present a significant risk to the continued existence of *R. mauiensis*. Therefore, the threats continue to be of a high magnitude to this species on Kauai. Threats to the species overall are also of a high magnitude, since half of the individuals are found on Kauai. In addition, threats to *R. mauiensis* are imminent because they are ongoing in the Kauai and the majority of the Maui populations. Therefore, we retained an LPN of 2 for this species.

Rorippa subumbellata (Tahoe yellow cress)—The following summary is based on information contained in our files and the petition we received on December 27, 2000. Tahoe yellow cress is a small perennial herb known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years generally indicate that species occurrence fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 show a preponderance of years with high lake levels that would isolate and reduce Tahoe yellow cress occurrences at higher beach elevations. From the standpoint of the species, less favorable peak years have occurred almost twice as often as more favorable low-level years. Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regime. During the 2003 and 2004 annual survey period, the lake level was approximately 6,224 ft (1,898 m); 2004 was the fourth consecutive year of low water. Tahoe yellow cress was present at 45 of the 72 sites surveyed (65 percent occupied), up from 15 sites (19 percent occupied) in 2000 when the lake level was high at 6,228 ft. Approximately 25,200 stems were counted or estimated in 2003, whereas during the 2000 annual survey, the estimated number of stems was 4,590. Lake levels began to rise again in 2005 and less habitat was available; intermediate lake levels are expected in 2007.

Many Tahoe yellow cress sites are intensively used for commercial and public purposes and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation have management programs for Tahoe yellow cress that include monitoring, fenced enclosures, and transplanting efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a conservation strategy coupled with a Memorandum of Understanding/Conservation Agreement. The conservation strategy, completed in 2003, contains goals and objectives for recovery and survival, a research and monitoring agenda, and serves as the foundation for an adaptive management program. Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to Tahoe yellow cress from various land uses have been reduced to a moderate magnitude. In high lake level years such as 2005, however, recreational use is concentrated within Tahoe yellow cress habitat, and we consider this threat in particular to be ongoing and imminent. Therefore, we maintained an LPN of 8 for this species.

Schiedea attenuata (no common name)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Schiedea pubescens (Maolioli)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Schiedea pubescens* is a reclining or weakly climbing vine found in diverse mesic to wet forest on Maui and Molokai, Hawaii. Currently, this species is known from six populations totaling approximately 100 individuals on Maui and Molokai. *Schiedea pubescens* is threatened by feral goats that consume it and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of the population of *S. pubescens* on Hawaii, and feral goats have been fenced out of a few of the west Maui populations of *S. pubescens*. Nonnative plants have been reduced in the populations that are fenced on Maui. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and the three populations on Molokai. In light of the extremely low number of individuals of this species, the threats from goats and nonnative plants are of a high magnitude because they pose a significant threat to the species, and imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Schiedea salicaria (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Schiedea salicaria* is an erect subshrub or shrub found on ridges and steep slopes in dry shrubland on Maui, Hawaii. Currently, this species is declining throughout its range, and is known from six populations totaling 100 to 300 individuals, typically of 25 individuals per population. This species is threatened by cattle that may directly prey upon it and degrade and destroy habitat, fire, and nonnative plants that compete for light and nutrients. This species is represented in an *ex-situ* collection. All of the threats occur range-wide, and no efforts for their control or eradication are being undertaken. We retained an LPN of 2.

The threats are imminent because they are ongoing, and are of a high magnitude, because in light of their severity and the small size of the population, they have the potential to adversely affect the species.

Sedum eastwoodiae (Red Mountain stonecrop)—The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. The petition we received on May 11, 2004 provided no new information on the species. Red Mountain stonecrop is a perennial succulent which occupies relatively barren, rocky openings and cliffs in lower montane coniferous forests, between 1,900 and 4,000 feet elevation. Its distribution is limited to Red Mountain, Mendocino County, California, where it occupies 30 acres scattered over 4 square miles. Total population size is estimated at between 5,300 and 23,000 plants, contained within 27 habitat polygons. Intensive monitoring suggests considerable annual variation in plant seedling success and inflorescence production; stonecrop density varied from year-to-year. The primary threat to the species is the potential for surface mining for chromium and nickel. The entire distribution area of Red Mountain stonecrop is either owned by mining interests or covered by mining claims that are not currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. The species distribution by ownership is described as follows: Federal (Bureau of Land Management)—95 percent (this portion of the distribution was recently included in the South Fork Eel River Wilderness Area, managed by BLM); and private—5 percent. Given the magnitude (high, because mining of the area would put the continued existence of the species at risk) and immediacy (nonimminent, because there are no known plans to mine the area) of the threat to the small, scattered populations, and its taxonomy (species), we assigned an LPN of 5 to this species.

Sicyos macrophyllus (Anunu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Sicyos macrophyllus* is a perennial vine found in wet *Metrosideros polymorpha* (ohia) forest and subalpine *Sophora chrysophylla-Myoporum sandwicense* (mamane-naio) forest on the island of Hawaii, Hawaii. This species is known from six populations totaling a few hundred individuals in the Kohala and Mauna Kea areas and in Hawaii Volcanoes National Park (Puna area) on the island of Hawaii. It appears that a naturally occurring population at Kipuka Ki in Hawaii Volcanoes National Park is reproducing by seeds, but seeds have not been successfully germinated under nursery conditions. This species is threatened by feral pigs and sheep that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of some of the areas where *S. macrophyllus* currently occurs, but the fences do not exclude sheep. Nonnative plants have been reduced in the populations that are fenced. However, the threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. Similarly the threat from sheep is ongoing and imminent in all populations, because the current fences do not exclude sheep. In addition, all of the threats are of a high magnitude, because habitat degradation and competition from nonnative plants present a risk to the species, resulting in direct mortality or significantly reducing the reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Solanum nelsonii (popolo)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004.

Stenogyne cranwelliae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Stenogyne cranwelliae* is a creeping vine found in wet forest dominated by *Metrosideros polymorpha* on the island of Hawaii, Hawaii. *Stenogyne cranwelliae* is known from 10 populations totaling 100 individuals. This species is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. In addition, this species is potentially threatened by rats that may directly prey upon it, and by randomly occurring natural events such as hurricanes and landslides. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. These threats are sufficient to adversely affect the species particularly in light of its small population size. We retained an LPN of 2 because the threats are of a high magnitude and are ongoing, so are imminent.

Stenogyne kealiae (no common name)—We have not updated our candidate assessment for this species, as we are currently developing a proposed listing rule.

Symphyotrichum georgianum (Georgia aster)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information from our files. No new information was provided in the petition we received on May 11, 2004.

Zanthoxylum oahuense (Ae)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Zanthoxylum oahuense* is a small tree found in mesic to wet forest habitat on Oahu, Hawaii. Currently this species is known from 11 populations totaling fewer than 40 individuals on Oahu. *Zanthoxylum oahuense* is threatened by feral pigs that directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and the two-spotted leafhopper. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. These threats are sufficient to adversely affect the species particularly in light of its small population size. We retained an LPN of 2 for this species, because the threats are of a high magnitude and are ongoing, so are imminent.

Ferns and Allies

Christella boydiae (no common name)—See above in ''*Summary of Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Doryopteris takeuchii (no common name)—We have not updated our candidate assessment, as we are currently developing a proposed listing rule for this species.

Huperzia stemmermanniae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Waewaeiole, a pendant clubmoss, is found in mesic to wet *Metrosideros polymorpha-Acacia koa* (ohia-koa) forests on the islands of Maui and Hawaii, Hawaii. Only four populations are known, totaling fewer than 30 individuals on Hawaii and Maui. *Huperzia stemmermanniae* is threatened by feral pigs, goats, cattle, and deer that degrade and/or destroy habitat, and by nonnative plants that compete for light, space, and nutrients. *Huperzia stemmermanniae* is also threatened by randomly occurring

natural events due to its small population size. One population at Waikamoi Preserve may benefit from fencing for deer and pigs. The threats to *H. stemmermanniae* from pigs, goats, cattle, deer, and nonnative plants are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its range, resulting in direct mortality or significantly reducing reproductive capacity. They are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Microlepia strigosa var. *mauiensis* (Palapalai)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Palapalai is a fern found in mesic to wet forests. It is currently found on the islands of Maui, Hawaii, and Oahu, from at least 11 populations totaling more than 35 individuals. There is a possibility that the range of this plant variety could be larger and include the other main Hawaiian Islands. *Microlepia strigosa* var. *mauiensis* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Pigs have been fenced out of areas on east and west Maui, and on Hawaii, where *M. strigosa* var. *mauiensis* currently occurs, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui, Hawaii, and Oahu. Therefore, the threats from feral pigs and nonnative plants are imminent. They are also of a high magnitude because they are sufficiently severe to adversely affect the species throughout its range, resulting in direct mortality or significantly reducing reproductive capacity. We therefore retained an LPN of 3 for *M. strigosa* var. *mauiensis*.

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on five petitions seeking to reclassify threatened species to endangered status. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms also constitute the resubmitted petition findings for these species. For the three grizzly bear populations, we have not updated our resubmitted petition findings through this notice as explained below. For the other two species (spikedace and loach minnow), we find that reclassification to endangered status is currently warranted but precluded by work identified above (see ''*Petition Findings for Candidate Species*'' above). One of the primary reasons that the work identified above is higher priority is that these species are currently listed as threatened under the Act, and therefore they already receive certain protections under the Act. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Prohibited actions under section 9 include, but are not limited to, take (i.e., harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). Other protections include those under section 7(a)(2) of the Act whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

(1) Grizzly bear (*Ursus arctos horribilis*) North Cascades ecosystem, Cabinet-Yaak, and Selkirk populations (Region 6)—We have not updated our finding with regard to the grizzly bear populations in the North Cascade, the Cabinet-Yaak, or the Selkirk Ecosystems in this notice. Between 1991 and 1999, we issued warranted but precluded findings to reclassify grizzly bears as endangered in the North Cascades (56 FR 33892–33894, July 24, 1991; 63 FR 30453–30454, June 4, 1998), the Cabinet-Yaak (58 FR 8250–8251, February 12, 1993; 64 FR 26725–26733, May 17, 1999), and the Selkirk Ecosystems (64 FR 26725–26733, May 17, 1999). We also made previous resubmitted petition findings that uplisting these three populations to endangered was warranted but precluded through previous CNORS (most recently on September 12, 2006; 71 FR 53755). However, none of the findings included a formal analysis under our 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS) under the Endangered Species Act (61 FR 4722–4725, February 7, 1996). Under this policy a formal analysis of discreteness and significance is necessary to determine if the entity is a ''listable entity.'' While our 1999 revised 12-month finding performed a preliminary DPS analysis, it appears to have incorrectly analyzed significance to the listed entity (i.e., grizzly bears in the lower 48 States) instead of significance to the taxon (*Ursus arctos horribilis*) as required by our DPS policy (64 FR 26725–26733, May 17, 1999; 61 FR 4722–4725, February 7, 1996; *National Association of Home Builders* v. *Norton*, 340 F. 3d 835, 852 (9th Cir. 2003)). Additionally, emerging biological information now suggests increasing levels of connectivity among some of these populations, casting doubt on their discreteness.

Also relevant is the March 16, 2007, Department of Interior Office of the Solicitor memorandum (available at: *http://www.doi.gov/solicitor/M37013.pdf*) regarding the meaning of ''significant portion of [a species'] range.'' This memorandum states that ''whenever the Secretary concludes because of the statutory five-factor analysis that a species is 'in danger of extinction throughout * * * a significant portion of its range,' it is to be listed and the protections of the ESA applied to the species in that portion of its range.'' The memorandum goes on to say, ''the Secretary has broad discretion in defining what portion of a range is 'significant.' '' To date, the Service has not determined whether the North Cascade, the Cabinet-Yaak, or the Selkirk Ecosystems each constitutes a significant portion of the grizzly bear's range or whether they only represent significant portions of the species' range when combined with other units.

On April 18, 2007, the Service initiated a 5-year review to evaluate the current status of grizzly bears in the lower 48-States outside of the Greater Yellowstone Area (72 FR 19549–19551). This status review will fully evaluate the status of each population and the appropriate application of the DPS policy and the solicitor memorandum regarding recognition and listing of significant portions of range. We expect this 5-year review to be completed in 2008.

(2) Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303, July 11, 1994, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted-but-precluded)—The spikedace, a small fish species in a monotypic genus, is found in moderate-to-large perennial waters, where it inhabits shallow riffles with sand, gravel, and rubble substrates, and moderate-to-swift currents and swift pools over sand or gravel substrates. This species is now common only in Aravaipa Creek and portions of the upper Gila River in New Mexico. Smaller, less stable populations occur in some areas of the upper Gila, as well as in the Verde River.

The threats to this species are primarily from nonnative aquatic species and water withdrawals, including groundwater pumping. Other threats include grazing, road construction, and recreation. Spikedace

occur in only 5 to 10 percent of their historical range, and threats occur over the majority of their range, to varying degrees. Threats are exacerbated by ongoing drought. In addition, different threats can interact with each other to further cause decline. For example, drought and water withdrawals may decrease the amount of habitat available to all species within a given stream, forcing natives and nonnatives into closer proximity to one another. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased somewhat as Federal agencies remove cattle from streams directly, but upland conditions continue to degrade watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. For these reasons, the magnitude of the threat to this species is high. In addition, most of the threats to this species are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (i.e., water exchanges), or are not easily reversed (i.e., nonnative stocking and impacts from grazing), the threats to the species are imminent. Therefore, we assigned this species an LPN of 1 for uplisting to endangered.

(3) Loach minnow (*Tiaroga cobitis*) (Region 2) (see 59 FR 35303, July 11, 1994, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted-but-precluded)—This small fish, the only species within the genus, is found in small-to-large perennial streams and uses shallow, turbulent riffles with primarily cobble substrate and swift currents. This species is now common only in Aravaipa Creek and the Blue River in Arizona, and limited portions of the San Francisco, upper Gila, and Tularosa rivers in New Mexico. Smaller, less stable populations occur in some areas of the upper Gila, such as the Middle Fork and in small areas of several tributary streams to Aravaipa Creek and the Blue and Tularosa rivers, such as Pace, Frieborn, Negrito, Turkey, and Deer creeks. Small populations are also present in Eagle Creek and the Black River.

The threats to this species are primarily from nonnative aquatic species and water withdrawals, including groundwater pumping. Other threats include grazing, road construction, and recreation. Loach minnow occur in only 10 to 15 percent of their historic range, and threats occur over the majority of their range, to varying degrees. Threats are exacerbated by ongoing drought. In addition, different threats can interact with each other to further cause decline. For example, drought and water withdrawals may decrease the amount of habitat available to all species within a given stream, bringing natives and nonnatives into closer contact. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased somewhat as Federal agencies remove cattle from streams directly, but upland conditions continue to degrade watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. For these reasons, the magnitude of the threats to this species is high. In addition, most of the threats to this species are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (i.e., water exchanges), or are not easily reversed (i.e., nonnative stocking and impacts from grazing), the threats to this species are imminent. Therefore, we assigned this species an LPN of 1 for uplisting to endangered.

Current Notice of Review

We gather data on plants and animals native to the U.S. that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species and all species proposed for listing under the Act. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher-priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see ''Findings on Resubmitted Petitions'' section for additional information).

The ''Priority'' column indicates the LPN for each candidate species which we use to determine the most appropriate use of our available

resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct comments or questions (see addresses at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historic range for the species or vertebrate population (for vertebrate populations, this is the historic range for the entire species or subspecies and not just the historic range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are species we included either as proposed species or as candidates in the previous CNOR (published May 11, 2005) that are no longer proposed species or candidates for listing. Since May 11, 2005, we removed two species from proposed status and removed six species from candidate status for the reasons indicated by the codes. The first column indicates the present status of the species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the Act's definition of ''species'' and current taxonomic understanding.

U—Species not subject to the degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486 (303/236–7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199 (907/786–3505).

Region 8. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825.

We will provide comments received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the comment. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing pursuant to section 4(b)(7) of the Act is appropriate). Comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the

record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This notice of review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
MAMMALS						
C*	3	R1	*Emballonura semicaudata rotensis.*	Emballonuridae	Bat, Pacific sheath-tailed (Mariana Islands subspecies).	U.S.A. (GU, CNMI).
C*	3	R1	*Emballonura semicaudata semicaudata.*	Emballonuridae	Bat, Pacific sheath-tailed (American Samoa DPS).	U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu.
PT	2	R7	*Ursus maritimus*	Ursidae	Bear, polar	U.S.A. (AK), Canada, Russia, Denmark Greenland), Norway.
C*	2	R5	*Sylvilagus transitionalis*	Leporidae	Cottontail, New England	U.S.A. (CT, MA, ME, NH, NY, RI, VT).
C*	6	R8	*Martes pennanti*	Mustelidae	Fisher (west coast DPS)	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD,ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada.
C	3	R2	*Zapus hudsonius luteus*	Zapodidae	Mouse, New Mexico meadow jumping.	U.S.A. (AZ, CO, NM).
C*	3	R1	*Thomomys mazama couchi.*	Geomyidae	Pocket gopher, Shelton	U.S.A. (WA).
C	3	R1	*Thomomys mazama douglasii.*	Geomyidae	Pocket gopher, Brush Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama glacialis.*	Geomyidae	Pocket gopher, Roy Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama louiei*	Geomyidae	Pocket gopher, Cathlamet	U.S.A. (WA).
C*	3	R1	*Thomomys mazama melanops.*	Geomyidae	Pocket gopher, Olympic	U.S.A. (WA).
C*	3	R1	*Thomomys mazama pugetensis.*	Geomyidae	Pocket gopher, Olympia	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tacomensis.*	Geomyidae	Pocket gopher, Tacoma	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tumuli.*	Geomyidae	Pocket gopher, Tenino	U.S.A. (WA).
C*	3	R1	*Thomomys mazama yelmensis.*	Geomyidae	Pocket gopher, Yelm	U.S.A. (WA).
C*	3	R8	*Spermophilus tereticaudus chlorus.*	Sciuridae	Squirrel, Palm Springs (=Coachella Valley) round-tailed ground.	U.S.A. (CA).
C*	9	R1	*Spermophilus brunneus endemicus.*	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	5	R1	*Spermophilus washingtoni*	Sciuridae	Squirrel, Washington ground.	U.S.A. (WA, OR).
BIRDS						
C*	3	R1	*Porzana tabuensis*	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga.
C*	2	R1	*Oreomystis bairdi*	Fringillidae	Creeper, Kauai	U.S.A. (HI).
C*	3	R8	*Coccyzus americanus*	Cuculidae	Cuckoo, yellow-billed (Western U.S. DPS).	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America.
C*	9	R1	*Gallicolumba stairi*	Columbidae	Ground-dove, friendly (American Samoa DPS).	U.S.A. (AS), Independent Samoa.
C*	3	R1	*Eremophila alpestris strigata.*	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
C*	6	R5	*Calidris canutus rufa*	Scolopacidae	Knot, red	U.S.A. (Atlantic coast), Canada, South America.
C*	2	R7	*Brachyramphus brevirostris.*	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.
C*	5	R8	*Synthliboramphus hypoleucus.*	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	8	R2	*Tympanuchus pallidicinctus.*	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C*	6	R1	*Centrocercus urophasianus.*	Phasianidae	Sage-grouse, greater (Columbia Basin DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	3	R1	*Oceanodroma castro*	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan.
C*	5	R4	*Dendroica angelae*	Emberizidae	Warbler, elfin-woods	U.S.A. (PR).
REPTILES						
C*	2	R2	*Sceloporus arenicolus*	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
C*	9	R3	*Sistrurus catenatus catenatus.*	Viperidae	Massasauga (=rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada.
C*	3	R4	*Pituophis melanoleucus lodingi.*	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	5	R4	*Pituophis ruthveni*	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	3	R2	*Kinosternon sonoriense longifemorale.*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
AMPHIBIANS						
C*	9	R8	*Rana luteiventris*	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC).
C*	3	R8	*Rana muscosa*	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS).	U.S.A (CA, NV).
C*	2	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C*	11	R8	*Rana onca*	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
C*	3	R3	*Cryptobranchus alleganiensis bishopi.*	Crytobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).
C*	2	R2	*Eurycea waterlooensis*	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	2	R2	*Eurycea naufragia*	Plethodontidae	Salamander, Georgetown	U.S.A. (TX).
C*	2	R2	*Eurycea chisholmensis*	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	11	R8	*Bufo canorus*	Bufonidae	Toad, Yosemite	U.S.A. (CA).
C	3	R2	*Hyla wrightorum*	Hylidae	Treefrog, Arizona (Huachuca/Canelo DPS).	U.S.A. (AZ), Mexico (Sonora).
C*	8	R4	*Necturus alabamensis*	Proteidae	Waterdog, black warrior (=Sipsey Fork)	U.S.A. (AL).
FISHES						
C*	2	R2	*Gila nigra*	Cyprinidae	Chub, headwater	U.S.A. (AZ, NM).
C	5	R4	*Phoxinus saylori*	Cyprinidae	Dace, laurel	U.S.A. (TN).
C*	11	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C*	5	R4	*Etheostoma susanae*	Percidae	Darter, Cumberland	U.S.A. (KY, TN).
C*	5	R4	*Percina aurora*	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C*	2	R4	*Etheostoma phytophilum*	Percidae	Darter, rush	U.S.A. (AL).
C*	2	R4	*Etheostoma moorei*	Percidae	Darter, yellowcheek	U.S.A (AR).
C*	2	R4	*Noturus crypticus*	Ictaluridae	Madtom, chucky	U.S.A. (TN).
C	5	R4	*Moxostoma* sp.	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN).
C*	2	R3	*Cottus* sp.	Cottidae	Sculpin, grotto	U.S.A. (MO).
C*	5	R2	*Notropis oxyrhynchus*	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C*	5	R2	*Notropis buccula*	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C*	3	R2	*Catostomus discobolus yarrowi.*	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PSAT	N/A	R1	*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
CLAMS						
C	5	R4	*Villosa choctawensis*	Unionidae	Bean, Choctaw	U.S.A. (AL, FL).
C	2	R3	*Villosa fabalis*	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON).
C	2	R4	*Fusconaia rotulata*	Unionidae	Ebonyshell, round	U.S.A. (AL, FL).
C*	2	R2	*Popenaias popei*	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.
C*	2	R4	*Ptychobranchus subtentum.*	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
C	2	R4	*Ptychobranchus jonesi*	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL).
C*	5	R4	*Lampsilis rafinesqueana*	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
C	2	R3	*Plethobasus cyphyus*	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).
C*	2	R4	*Margaritifera marrianae*	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL).
C*	5	R4	*Lexingtonia dolabelloides*	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA).
C	5	R4	*Pleurobema strodeanum*	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL).
C*	2	R4	*Pleurobema hanleyianum*	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	5	R4	*Fusconaia escambia*	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL).
C	11	R4	*Quincuncina burkei*	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL).
C	5	R4	*Hamiota* (= *Lampsilis*) *australis*.	Unionidae	Sandshell, southern	U.S.A. (AL, FL).
C	4	R3	*Cumberlandia monodonta*	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV).
C*	2	R4	*Elliptio spinosa*	Unionidae	Spinymussel, Altamaha	U.S.A. (GA).
SNAILS						
C	2	R4	*Pleurocera foremani*	Pleuroceridae	Hornsnail, rough	U.S.A. (AL).
C	8	R4	*Elimia melanoides*	Pleuroceridae	Mudalia, black	U.S.A. (AL)
C*	9	R6	*Oreohelix peripherica wasatchensis*.	Oreohelicidae	Mountainsnail, Ogden	U.S.A. (UT).
C*	8	R6	*Stagnicola bonnevillensis*	Lymnaeidae	Pondsnail, fat-whorled (=Bonneville)	U.S.A. (UT).
C*	2	R4	*Leptoxis foremani* (= *downei*)	Pleuroceridae	Rocksnail, Interrupted (=Georgia)	U.S.A. (GA, AL).
C*	2	R1	*Ostodes strigatus*	Potaridae	Sisi snail	U.S.A. (AS).
C*	2	R2	*Pseudotryonia adamantina*.	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C*	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C*	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU).
C*	2	R1	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU, MP).
C*	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP).
C*	2	R2	*Cochliopa texana*	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX).
C*	2	R1	*Newcombia cumingi*	Achatinellidae	Snail, Newcomb's tree	U.S.A. (HI).
C*	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
C*	2	R2	*Pyrgulopsis chupaderae*	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C*	2	R8	*Pyrgulopsis notidicola*	Hydrobiidae	Springsnail, elongate mud meadows.	U.S.A. (NV).
C*	11	R2	*Pyrgulopsis gilae*	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
C*	2	R2	*Tryonia circumstriata* (= *stocktonensis*)	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C*	8	R2	*Pyrgulopsis thompsoni*	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C*	11	R2	*Pyrgulopsis thermalis*	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM).
C*	2	R2	*Pyrgulopsis morrisoni*	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
C*	2	R2	*Tryonia cheatumi*	Hydrobiidae	Springsnail (= Tryonia), Phantom.	U.S.A. (TX).
C*	2	R2	*Pyrgulopsis bernardina*	Hydrobiidae	Springsnail, San Bernardino.	U.S.A. (AZ), Mexico (Sonora).
C*	2	R2	*Pyrgulopsis trivialis*	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
INSECTS						
C*	8	R1	*Nysius wekiuicola*	Lygaeidae	Bug, Wekiu	U.S.A. (HI).
C	3	R4	*Strymon acis bartrami*	Lycaenidae	Butterfly, Bartram's hairstreak.	U.S.A. (FL).
C	3	R4	*Anaea troglodyta floridalis*	Nymphalidae	Butterfly, Florida leafwing	U.S.A. (FL).
C*	3	R1	*Hypolimnas octucula mariannensis*.	Nymphalidae	Butterfly, Mariana eight-spot.	U.S.A. (GU, MP).
C*	2	R1	*Vagrans egistina*	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
C*	6	R4	*Cyclargus thomasi bethunebakeri*.	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas.
C*	5	R4	*Glyphopsyche sequatchie*	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus insularis*.	Carabidae	Cave beetle, Baker Station (= insular).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus caecus*.	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C	11	R4	*Pseudanophthalmus colemanensis*.	Carabidae	Cave beetle, Coleman	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus fowlerae*.	Carabidae	Cave beetle, Fowler's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus frigidus*.	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus tiresias*.	Carabidae	Cave beetle, Indian Grave Point (= Soothsayer).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus inquisitor*.	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus troglodytes*.	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus paulus*.	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus parvus*.	Carabidae	Cave beetle, Tatum	U.S.A. (KY)
C*	3	R1	*Euphydryas editha taylori*	Nymphalidae	Checkerspot butterfly, Taylor's (= Whulge).	U.S. A. (OR, WA), Canada (BC).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	9	R1	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	Damselfly, blackline Hawaiian.	U.S.A. (HI).
C*	2	R1	*Megalagrion leptodemas*	Coenagrionidae	Damselfly, crimson Hawaiian.	U.S.A. (HI).
C*	2	R1	*Megalagrion nesiotes*	Coenagrionidae	Damselfly, flying earwig Hawaiian.	U.S.A. (HI).
C*	2	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian.	U.S.A. (HI).
C*	8	R1	*Megalagrion xanthomelas*	Coenagrionidae	Damselfly, orangeblack Hawaiian.	U.S.A. (HI).
C*	2	R1	*Megalagrion pacificum*	Coenagrionidae	Damselfly, Pacific Hawaiian.	U.S.A. (HI).
C*	2	R8	*Dinacoma caseyi*	Scarabidae	June beetle, Casey's	U.S.A. (CA).
C	5	R8	*Ambrysus funebris*	Naucoridae	Naucorid bug (= Furnace Creek), Nevares Spring.	U.S.A. (CA).
C*	2	R1	*Drosophila attigua*	Drosophilidae	fly, Picture-wing	U.S.A. (HI).
C*	2	R1	*Drosophila digressa*	Drosophilidae	fly, Picture-wing [unnamed].	U.S.A. (HI).
C*	8	R2	*Heterelmis stephani*	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
C*	8	R3	*Hesperia dacotae*	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C*	5	R1	*Polites mardon*	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
C*	8	R6	*Cicindela albissima*	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes.	U.S.A. (UT).
C*	5	R4	*Cicindela highlandensis*	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
ARACHNIDS						
C*	2	R2	*Cicurina wartoni*	Dictynidae	Meshweaver, Warton cave.	U.S.A. (TX).
CRUSTACEANS						
C	2	R2	*Gammarus hyalleloides*	Gammaridae	Amphipod, diminutive	U.S.A. (TX).
C*	5	R1	*Metabetaeus lohena*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Palaemonella burnsi*	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Procaris hawaiana*	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
C*	4	R1	*Vetericaris chaceorum*	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
C*	11	R4	*Typhlatya monae*	Atyidae	Shrimp, troglobitic groundwater.	U.S.A. (PR), Barbuda, Dominican Republic.
FLOWERING PLANTS						
C*	11	R8	*Abronia alpina*	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).
C*	8	R4	*Arabis georgiana*	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA).
C*	11	R4	*Argythamnia blodgettii*	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL).
C*	3	R1	*Artemisia campestris* var. *wormskioldii.*	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C*	2	R1	*Astelia waialealae*	Liliaceae	Pa'iniu	U.S.A. (HI).
C*	11	R6	*Astragalus tortipes*	Fabaceae	Milk-vetch, Sleeping Ute	U.S.A. (CO).
C*	2	R1	*Bidens amplectens*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens campylotheca pentamera.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens campylotheca waihoiensis.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R1	*Bidens conjuncta*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens micrantha ctenophylla.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R4	*Brickellia mosieri*	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C*	2	R1	*Calamagrostis expansa*	Poaceae	Reedgrass, Maui	U.S.A. (HI).
C*	2	R1	*Calamagrostis hillebrandii*	Poaceae	Reedgrass, Hillebrand's	U.S.A. (HI).
C*	5	R4	*Calliandra locoensis*	Mimosaceae	No common name	U.S.A. (PR).
C*	5	R8	*Calochortus persistens*	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA, OR).
C*	5	R4	*Calyptranthes estremerae*	Myrtaceae	No common name	U.S.A. (PR).
C*	2	R1	*Canavalia napaliensis*	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	2	R1	*Canavalia pubescens*	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	8	R1	*Castilleja christii*	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
C*	9	R4	*Chamaecrista lineata* var. *keyensis.*	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C*	12	R4	*Chamaesyce deltoidea pinetorum.*	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C*	9	R4	*Chamaesyce deltoidea serpyllum.*	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C*	2	R1	*Chamaesyce eleanoriae*	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	3	R1	*Chamaesyce remyi* var. *kauaiensis.*	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	3	R1	*Chamaesyce remyi* var. *remyi.*	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	2	R1	*Charpentiera densiflora*	Amaranthaceae	Papala	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	6	R8	*Chorizanthe parryi* var. *fernandina*.	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
C*	2	R4	*Chromolaena frustrata*	Asteraceae	Thoroughwort, Cape Sable.	U.S.A. (FL).
C*	2	R4	*Consolea corallicola*	Cactaceae	Cactus, Florida semaphore.	U.S.A. (FL).
C*	5	R4	*Cordia rupicola*	Boraginaceae	No common name	U.S.A. (PR), Anegada.
C*	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea calycina*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea eleeleensis*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea kuhihewa*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea kunthiana*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea lanceolata*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea tritomantha*	Campanulaceae	ʻaku ʻaku	U.S.A. (HI).
C*	2	R1	*Cyrtandra filipes*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	2	R1	*Cyrtandra kaulantha*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	2	R1	*Cyrtandra oenobarba*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	2	R1	*Cyrtandra sessilis*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	3	R4	*Dalea carthagenensis* var. *floridana*.	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C*	5	R5	*Dichanthelium hirstii*	Poaceae	Panic grass, Hirsts'	U.S.A. (DE, GA, NC, NJ).
C*	5	R4	*Digitaria pauciflora*	Poaceae	Crabgrass, Florida pineland.	U.S.A. (FL).
C*	3	R1	*Dubautia imbricata imbricata*.	Asteraceae	Naʻenaʻe	U.S.A. (HI).
C*	3	R1	*Dubautia plantaginea magnifolia*.	Asteraceae	Naʻenaʻe	U.S.A. (HI).
C*	2	R1	*Dubautia waialealae*	Asteraceae	Naʻenaʻe	U.S.A. (HI).
C*	3	R2	*Echinomastus erectocentrus* var. *acunensis*.	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
C*	8	R2	*Erigeron lemmonii*	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
C*	2	R1	*Eriogonum codium*	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C	6	R8	*Eriogonum corymbosum* var. *nilesii*.	Polygonaceae	Buckwheat, Las Vegas	U.S.A. (NV).
C	2	R8	*Eriogonum diatomaceum*	Polygonaceae	Buckwheat, Churchill Narrows.	U.S.A. (NV).
C*	5	R8	*Eriogonum kelloggii*	Polygonaceae	Buckwheat, Red Mountain	U.S.A. (CA).
C*	2	R1	*Festuca hawaiiensis*	Poaceae	No common name	U.S.A. (HI).
C*	11	R2	*Festuca ligulata*	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico.
C*	2	R1	*Gardenia remyi*	Rubiaceae	Nanu	U.S.A. (HI).
C*	8	R1	*Geranium hanaense*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	8	R1	*Geranium hillebrandii*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R1	*Geranium kauaiense*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R4	*Gonocalyx concolor*	Ericaceae	No common name	U.S.A. (PR).
C	5	R4	*Harrisia aboriginum*	Cactaceae	Pricklyapple, aboriginal (shellmound applecactus).	U.S.A. (FL).
C*	5	R8	*Hazardia orcuttii*	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico.
C*	2	R1	*Hedyotis fluviatilis*	Rubiaceae	Kampuaʻa	U.S.A. (HI).
C*	5	R4	*Helianthus verticillatus*	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN).
C*	5	R2	*Hibiscus dasycalyx*	Malvaceae	Rose-mallow, Neches River.	U.S.A. (TX).
C*	9	R4	*Indigofera mucronata* var. *keyensis*.	Fabaceae	Indigo, Florida	U.S.A. (FL).
C	2	R6	*Ipomopsis polyantha*	Polemoniaceae	Skyrocket, Pagosa	U.S.A. (CO).
C*	5	R8	*Ivesia webberi*	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C*	3	R1	*Joinvillea ascendens ascendens*.	Joinvilleaceae	ʻOhe	U.S.A. (HI).
C*	2	R1	*Keysseria* (= *Lagenifera*) *erici*.	Asteraceae	No common name	U.S.A. (HI).
C*	8	R1	*Keysseria* (= *Lagenifera*) *helenae*.	Asteraceae	No common name	U.S.A. (HI).
C*	2	R1	*Korthalsella degeneri*	Viscaceae	Hulumoa	U.S.A. (HI).
C*	2	R1	*Labordia helleri*	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	2	R1	*Labordia pumila*	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	5	R4	*Leavenworthia crassa*	Brassicaceae	Gladecress, unnamed	U.S.A. (AL).
C*	2	R2	*Leavenworthia texana*	Brassicaceae	Gladecress, Texas golden	U.S.A. (TX).
C*	5	R4	*Lesquerella globosa*	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C*	2	R4	*Linum arenicola*	Linaceae	Flax, sand	U.S.A. (FL).
C*	3	R4	*Linum carteri* var. *carteri*	Linaceae	Flax, Carter's small-flowered.	U.S.A. (FL).
C*	8	R1	*Lysimachia daphnoides*	Primulaceae	Lehua makanoe	U.S.A. (HI).
C*	2	R1	*Melicope christophersenii*	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	*Melicope degeneri*	Rutaceae	Alani	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of Supplementary Information for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	2	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	*Melicope paniculata*	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	*Melicope puberula*	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	*Myrsine fosbergii*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	*Myrsine mezii*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	*Myrsine vaccinioides*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	8	R5	*Narthecium americanum*	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
C*	2	R1	*Nothocestrum latifolium*	Solanaceae	ʻAiea	U.S.A. (HI).
C*	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI).
C*	3	R2	*Pediocactus peeblesianus* var. *fickeiseniae.*	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
C*	2	R6	*Penstemon debilis*	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO).
C*	6	R6	*Penstemon scariosus* var. *albifluvis.*	Scrophulariaceae	Beardtongue, White River	U.S.A. (CO, UT).
C*	2	R1	*Peperomia subpetiolata*	Piperaceae	ʻAla ʻala wai nui	U.S.A. (HI).
C	5	R8	*Phacelia stellaris*	Hydrophyllaceae	Phacelia, Brand's	U.S.A. (CA), Mexico.
C*	8	R6	*Phacelia submutica*	Hydrophyllaceae	Phacelia, DeBeque	U.S.A. (CO).
C*	2	R1	*Phyllostegia bracteata*	Lamiaceae	No common name	U.S.A. (HI).
C*	8	R1	*Phyllostegia floribunda*	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	*Phyllostegia hispida*	Lamiaceae	No common name	U.S.A. (HI).
C*	5	R1	*Physaria tuplashensis*	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
C*	2	R1	*Pittosporum napaliense*	Pittosporaceae	Hoʻawa	U.S.A. (HI).
C*	5	R4	*Platanthera integrilabia*	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C*	3	R1	*Platydesma cornuta* var. *cornuta.*	Rutaceae	No common name	U.S.A. (HI).
C*	3	R1	*Platydesma cornuta* var. *decurrens.*	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	*Platydesma remyi*	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	*Platydesma rostrata*	Rutaceae	Pilo kea lau liʻi	U.S.A. (HI).
C	2	R1	*Pleomele fernaldii*	Agavaceae	Hala pepe	U.S.A. (HI).
C*	2	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI).
C*	11	R8	*Potentilla basaltica*	Rosaceae	Cinquefoil, Soldier Meadow.	U.S.A. (NV).
C*	2	R1	*Pritchardia hardyi*	Asteraceae	Loʻulu	U.S.A. (HI).
C*	3	R1	*Pseudognaphalium* (= *Gnaphalium*) *sandwicensium* var. *molokaiense.*	Asteraceae	ʻEnaʻena	U.S.A. (HI).
C*	2	R1	*Psychotria grandiflora*	Rubiaceae	Kopiko	U.S.A. (HI).
C*	3	R1	*Psychotria hexandra* ssp. *oahuensis* var. *oahuensis.*	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	*Psychotria hobdyi*	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	*Pteralyxia macrocarpa*	Apocynaceae	Kaulu	U.S.A. (HI).
C*	2	R1	*Ranunculus hawaiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	8	R8	*Rorippa subumbellata*	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV).
C*	2	R1	*Schiedea attenuata*	Caryophyllaceae	No common name	U.S.A. (HI).
C*	2	R1	*Schiedea pubescens*	Caryophyllaceae	Maʻoliʻoli	U.S.A. (HI).
C*	2	R1	*Schiedea salicaria*	Caryophyllaceae	No common name	U.S.A. (HI).
C*	5	R8	*Sedum eastwoodiae*	Crassulaceae	Stonecrop, Red Mountain	U.S.A. (CA).
C*	2	R1	*Sicyos macrophyllus*	Cucurbitaceae	ʻAnunu	U.S.A. (HI).
C	12	R4	*Sideroxylon reclinatum* ssp. *austrofloridense.*	Sapotaceae	Bully, Everglades	U.S.A. (FL).
C*	8	R1	*Solanum nelsonii*	Solanaceae	Popolo	U.S.A. (HI).
C	8	R4	*Solidago plumosa*	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC).
C*	2	R1	*Stenogyne cranwelliae*	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	*Stenogyne kealiae*	Lamiaceae	No common name	U.S.A. (HI).
C*	8	R4	*Symphyotrichum georgianum.*	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
C*	2	R1	*Zanthoxylum oahuense*	Rutaceae	Aʻe	U.S.A. (HI).
FERNS AND ALLIES						
C*	8	R1	*Christella boydiae* (= *Cyclosorus boydiae* var. *boydiae* + *Cyclosorus boydiae kipahuluensis*).	Thelypteridaceae	No common name	U.S.A. (HI).
C*	2	R1	*Doryopteris takeuchii*	Pteridaceae	No common name	U.S.A. (HI).
C*	2	R1	*Huperzia* (= *Phlegmariurus*) *stemmermanniae.*	Lycopodiaceae	Wawaeʻiole	U.S.A. (HI).
C*	3	R1	*Microlepia strigosa* var. *mauiensis* (= *Microlepia mauiensis*).	Dennstaedtiaceae	Palapalai	U.S.A. (HI).

TABLE 2.—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[Note: See end of Supplementary Information for an explanation of symbols used in this table.0

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
FISHES						
Rp	A	R8	*Gila bicolor vaccaceps*	Cyprinidae	Chub, Cowhead tui chub	U.S.A. (CA).
Rc	N	R6	*Thymallus arcticus*	Salmonidae	Grayling, Fluvial arctic (upper Missouri River DPS).	U.S.A. (MT, WY).
INSECTS						
Rc	U	R4	*Pseudanophthalmus major.*	Carabidae	Cave beetle, Beaver	U.S.A. (KY).
Rc	A, U	R4	*Pseudanophthalmus inexpectatus.*	Carabidae	Cave beetle, surprising	U.S.A. (KY).
Rc	U	R6	*Zaitzevia thermae*	Elmidae	Beetle, Warm Spring Zaitzevian riffle.	U.S.A. (MT).
FLOWERING PLANTS						
Rp	A	R6	*Penstemon grahamii*	Scrophulariaceae	Beardtongue, Graham	U.S.A. (CO, UT).
Rc	A	R1	*Erigeron basalticus*	Asteraceae	Daisy, basalt	U.S.A. (WA).
FERNS AND ALLIES						
Rc	A, I	R1	*Botrychium lineare*	Ophioglossaceae	Moonwort, slender	U.S.A. (AK, CA, CO, ID, MT, OR, WA), Canada (AB, BC, NB, QC).

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Federal Register

Thursday,
December 6, 2007

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 20, 25, 201, et al.
Index of Legally Marketed Unapproved New Animal Drugs for Minor Species; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 25, 201, 202, 207, 225, 226, 500, 510, 511, 515, 516, 558, and 589

[Docket No. 2006N–0067]

RIN 0910–AF67

Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Minor Use and Minor Species Animal Health Act of 2004 (MUMS act) amended the Federal Food, Drug, and Cosmetic Act (the act) to authorize the U.S. Food and Drug Administration (FDA, the agency) to establish new regulatory procedures that provide incentives intended to make more drugs legally available to veterinarians and animal owners for the treatment of minor animal species and uncommon diseases in major animal species. At this time, FDA is issuing final regulations to implement section 572 of the act entitled ''Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.'' These regulations establish administrative procedures and criteria for index listing a new animal drug for use in a minor species. Such indexing provides a basis for legally marketing an unapproved new animal drug intended for use in a minor species.

DATES: This rule is effective February 19, 2008.

FOR FURTHER INFORMATION CONTACT: Bernadette Dunham, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *Bernadette.Dunham@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In enacting the MUMS act (Pub. L. 108–282), Congress sought to encourage the development of animal drugs that are currently unavailable to minor species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats) in the United States or to major species afflicted with uncommon diseases or conditions (minor use). Congress recognized that the markets for drugs intended to treat these species, diseases, or conditions are so small that there are often insufficient economic incentives to motivate sponsors to develop data to support approvals. Further, Congress recognized that some minor species populations are too small or their management systems too diverse to make it practical to conduct traditional studies to demonstrate safety and effectiveness of animal drugs for such uses. As a result of these limitations, sponsors have generally not been willing or able to collect data to support legal marketing of drugs for these species, diseases, or conditions. Consequently, Congress enacted the MUMS act, which amended the Federal Food, Drug, and Cosmetic Act to provide incentives to develop new animal drugs for minor species and minor use, while still ensuring appropriate safeguards for animal and human health.

The major incentives of the MUMS act include the following:

(1) Designation, established by section 573 of the act (21 U.S.C. 360ccc–2), which provides for eligibility for grants and contracts to defray the costs of qualified safety and effectiveness testing expenses and manufacturing expenses incurred in the development of designated new animal drugs. Designation also provides for eligibility for a 7-year period of exclusive marketing rights to enable sponsors to recover costs of drug development without competition. FDA published final regulations implementing the designation provision of the act on July 26, 2007 (72 FR 41010) (the designation final rule).

(2) Conditional approval, established by section 571 of the act (21 U.S.C. 360ccc), which provides for animal drug marketing after all safety and manufacturing components of a new animal drug approval have met the standards of section 512 of the act (21 U.S.C. 360b). For the effectiveness component, a reasonable expectation of effectiveness must be established, after which sponsors have up to 5 years to complete the demonstration of effectiveness by the standards of section 512 of the act and achieve a full approval. Regulations to implement the conditional approval provision will be proposed in the future.

(3) Indexing, established under section 572 of the act (21 U.S.C. 360ccc–1), which provides for the legal marketing of unapproved new animal drugs intended for use in a minor species through an integrated process of agency and expert panel review.

At this time, FDA is issuing final regulations implementing the indexing provisions of the MUMS act. These regulations establish procedures and criteria for index listing a new animal drug for use in a minor species. They describe a process whereby the agency makes a determination regarding the following: (1) The eligibility of a new animal drug, (2) the selection of a qualified expert panel, and (3) the findings of the qualified expert panel.

In the **Federal Register** of August 22, 2006 (71 FR 48840), FDA issued proposed regulations to implement section 572 of the act (21 U.S.C. 360ccc–1). The proposed rule initially provided for a 90-day public comment period during which the agency received several comments asserting that 90 days was not an adequate amount of time to prepare and submit meaningful comments. In response to this, in the **Federal Register** of October 2, 2006 (71 FR 57892), FDA extended the comment period allowing an additional 30 days of public comment.

II. Major Changes to the Proposed Rule

After considering public comments FDA has made the following changes to the proposed rule:

In § 516.123, paragraph (b) has been revised to read: ''The written notice will include information for scheduling the informal conference and state that a written request for a conference must be made within 60 days of the date FDA sends its notice.'' Also, paragraph (c) has been revised to read: ''Within 45 days of receiving a request for an informal conference, FDA will schedule and hold the informal conference at a time agreeable to both FDA and the person making the request.''

In § 516.123, proposed paragraphs (j) and (l)(3) have been deleted and paragraph (k) has been revised to read: ''The presiding officer will prepare a written report regarding the subject of the informal conference that states and describes the basis for his or her findings. Whenever time permits, the parties to the informal conference will have 30 days to review and comment on the report.''

In section 516.141, paragraph (b)(1) has been revised to read: ''A qualified expert panel member must be an expert qualified by training and experience to evaluate a significant aspect of target animal safety or effectiveness of the new animal drug under consideration.''

In addition, FDA has made two technical corrections to the proposed rule. The first one is in part 25 (21 CFR part 25). An amendment to § 25.33 was proposed as a conforming change to add index listed drugs to the list of actions for animal drugs which may be categorically excluded from the preparation of an environmental assessment. However, the agency neglected to propose a corresponding amendment to § 25.20 to also add index

listed drugs to the list of actions requiring preparation of an environmental assessment. Therefore, this final rule contains a conforming change to § 25.20(m) to correct this omission. The second technical correction is in part 207 (21 CFR part 207). Amendments to §§ 207.21 and 207.35 were proposed as conforming changes to include index listed drugs under the drug registration and listing provisions of part 207. However, the agency neglected to propose a corresponding amendment to § 207.20(c) which describes who must register and submit a drug list. Therefore, this final rule contains a conforming change to § 207.20(c) to correct this omission.

III. Comments

The agency received comments from six organizations on the August 22, 2006, proposal. Comments were received from a trade organization representing new animal drug manufacturers, a trade organization representing pet product manufacturers, an animal feed manufacturer, a professional association representing veterinarians, an aquaculture trade association, and a U.S. Government agency.

All of the comments supported the purpose of the proposed regulations. Four comments generally supported the structure and scope of the proposed regulations. Four comments expressed concern regarding the apparent complexity of the proposed regulations and encouraged the agency to demonstrate considerable flexibility in their implementation. The issue of greatest concern in these four comments involved the formation and functioning of the qualified expert panels proposed in the regulations—particularly the application of the conflict of interest provisions to potential panel members.

The agency understands the time and effort involved in providing comments on the proposed regulations and greatly appreciates this effort. The general issues noted previously, as well as a number of more specific issues raised in the comments, are addressed as follows:

(Comment 1) As noted, four comments expressed considerable concern over the apparent complexity of the process described in the proposed regulations. While most apparently accepted the need for this complexity as a direct consequence of the statutory requirements of section 572 of the statute, these comments uniformly expressed a desire that the agency be as flexible as possible in implementing the potentially more burdensome aspects of the regulations and encouraged the agency to provide as much guidance as possible to potential sponsors regarding their implementation.

(Response) The agency agrees that it should be flexible, to the extent allowable under the law, in implementing the indexing program. In order to further clarify the indexing process and assist requestors and potential requestors, the agency intends to develop guidance documents regarding various parts of the process as soon after finalization of implementing regulations as resources permit.

(Comment 2) One comment stated that the proposed indexing process is overly complex and too similar to the new animal drug approval process. This comment suggested that the proposed process be discarded and replaced with an alternative process that would emphasize general compounds rather than specific drug products.

(Response) The indexing process established by the MUMS act is for drug products rather than general compounds. For example, section 572(c)(1) of the act describes how to make a request for a determination of whether ''a new animal drug'' may be eligible for indexing. Moreover, that provision requires that the requestor submit information specific to a new animal drug, rather than for general compounds, such as information regarding the components and composition of the new animal drug and a description of the methods, facilities, and controls used for manufacturing the new animal drug. A request for addition to the index under section 572(d)(1) of the act is made ''with respect to a new animal drug for which [FDA] has a made a determination of eligibility.'' Additionally, in considering a request for eligibility for indexing, the statute requires that the request not involve the same drug in the same dosage form for the same intended use as a drug that is already approved or conditionally approved.

Based on this and similar language in the statute, the agency believes, with respect to the indexing of new animal drugs, that indexing should follow the product-specific model of new animal drug approval.

However, the agency notes that this basic statutory construction does not necessarily preclude information supporting the indexing of one product from being used to support the indexing of other products, provided the information is relevant to such products, and provided the party or parties gathering the information allow its use for that purpose if such information is proprietary.

(Comment 3) Four comments expressed concern about the formation and operation of qualified expert panels and, in particular, the application of the conflict of interest provisions of the regulations.

(Response) The agency is aware of the potential scarcity of experts to serve on some expert panels. It also wants to assure the integrity of this fundamental part of the indexing process, so that the agency can have confidence in the information and recommendations it receives from the expert panel and the public can trust the agency's decisions based on that information and recommendations.

The purpose of obtaining information regarding potential experts is to enable the agency to make an informed judgment, on a case-by-case basis, regarding whether a financial or other interest could impair the person's objectivity in serving on the panel or could create an unfair competitive advantage for a person or organization. Under the proposal, and not changed in the final rule, even if there is an otherwise disqualifying financial interest, FDA has discretion to nonetheless allow the person to serve as a member of the expert panel.

In making its determinations on the subject of conflicts of interest, the agency will be cognizant of both the need to assure the integrity of the expert panel process and the need to attract qualified experts to serve on these panels.

(Comment 4) Three comments suggested that the agency needs to consider the expertise of the entire panel as a whole, and not each panelist individually, when implementing the requirement that a panel be composed of ''experts qualified by training and experience to evaluate the safety and effectiveness of the new animal drug under consideration.''

(Response) It is the intention of the agency to consider the expertise of the entire panel as a whole, as suggested in the comment. Proposed § 516.141(b)(5) says that the ''panel, as a whole, is qualified by training and experience to evaluate the safety and effectiveness of the new animal drug under consideration.'' However, paragraph (b)(1) of the same regulation could be read as requiring that *each* individual member of a panel must meet this requirement, that is, each member of an expert panel is expected to be qualified to independently assess *all* aspects of a particular product's target animal safety *and* effectiveness. This was not the agency's intention and, therefore, the language of § 516.141(b)(1) has been revised to read: ''A qualified expert

panel member must be an expert qualified by training and experience to evaluate a significant aspect of target animal safety or effectiveness of the new animal drug under consideration.''

(Comment 5) Two comments suggested that the scope of review of the expert panel might be expanded to include elements of food safety and/or environmental safety.

(Response) The MUMS act clearly established several distinct steps in the review process for indexing new animal drugs. One step is the determination of eligibility for indexing, which involves an evaluation of most of the indexing criteria, including food, user and occupational safety and environmental impacts. This evaluation is to be performed by the agency prior to the formation of a qualified expert panel. After the agency makes its determination regarding eligibility, a subsequent step is the formation and operation of a qualified expert panel. The responsibilities of the expert panel are set forth in section 572(d)(2) of the act: Evaluate and make findings regarding target animal safety and effectiveness; provide information from which labeling can be written; and recommend whether the new animal drug should be over the counter, prescription, or veterinary feed directive.

Given this statutory construction, it would not be feasible or appropriate for the qualified expert panel to review or to comment upon aspects of product safety outside the scope of target animal safety and effectiveness. However, sponsors are free to involve experts, not serving in the capacity of qualified expert panel members, in the preparation of information submitted to the agency in support of a determination of eligibility for indexing.

(Comment 6) Several comments stated that 30 days is not a sufficient amount of time for a sponsor to submit a written response to the denial of a request for determination of eligibility for indexing or a denial of a request for indexing and indicated that this time period should be extended to 90 days.

(Response) While the agency agrees that 30 days may not be an adequate period for a written response to a denial, the agency also notes that the proposed regulation did not explicitly limit a sponsor to 30 days for a written response. Instead, it proposed that a sponsor must inform the agency within 30 days that it wishes to avail itself of the opportunity for an informal conference. Within 30 days of receipt of such a request, the agency would schedule such a conference at a time agreeable to both the agency and the sponsor, and the sponsor would be required to submit a written response at least two weeks prior to the scheduled meeting.

The agency continues to believe that it is appropriate to have a two-step process for scheduling an informal conference. This would involve an initial period of time during which a sponsor must signify their desire to have an informal conference followed by a second period of time during which the conference will actually be scheduled. The agency also continues to believe that it needs to receive the written response from a sponsor a minimum of two weeks prior to an informal conference.

However, the agency has extended the initial period during which sponsors must request an informal conference from 30 days to 60 days to permit sponsors additional time to consider the need for such a conference. The agency has also extended the second period of time during which the agency will schedule a requested informal conference from 30 days to 45 days. With these revisions, a sponsor may take as long as 60 days to request an informal conference, may request that the conference not be held until 45 days after such a request and need not submit the written response in support of the conference until two weeks before the conference. This process will generally permit sponsors to have as much as 90 days to prepare a written response, if they feel they need it.

Accordingly, the language of § 516.123(b) and (c) is revised to read as follows:

(b) The written notice will include information for scheduling the informal conference and state that a written request for a conference must be made within 60 days of the date FDA sends its notice.

(c) Within 45 days of receiving a request for an informal conference, FDA will schedule and hold the informal conference at a time agreeable to both FDA and the person making the request.

(Comment 7) Two comments stated that the language of § 516.123 indicated that informal conferences were, in fact, rather formal and one commentor asked for clarification of the reason for using the term ''informal'' in this context.

(Response) The statute and the proposed and final regulation use the phrase ''informal conference.'' The agency believes that the purpose of the statutory use of the term ''conference'' in section 572 of the act is to be distinct from the term ''hearing'' which is used in the context of similar denial or withdrawal decisions regarding products involved in the new animal drug approval process under section 512 of the act. The hearing referred to in section 512 of the act has been clarified by regulation to be a formal evidentiary hearing under 21 CFR part 12. The agency believes that the purpose of the statutory use of the word ''informal'' in section 572 of the act is to draw a further distinction between the formal evidentiary hearing under 512 of the act and the informal conference under section 572.

FDA believes that the process for the informal conference set forth in § 516.123 is appropriately tailored. While much less formal than the part 12 hearings, it still ensures that there is a meaningful opportunity for parties to express their views, a neutral decision maker, and an administrative record for judicial review if the final agency decision is challenged in court. Moreover, by describing the process in a regulation, the parties in the informal conference will have a common understanding of how it will operate, fostering an orderly operation and reducing the potential for disagreements over the process.

(Comment 8) One comment questioned the inclusion of the requirement for an estimation of annual product distribution in proposed § 516.129(c)(6).

(Response) In accordance with section 572(c)(1)(A) of the act, the request for determination of eligibility for indexing must include the anticipated annual distribution of the new animal drug. This information would be useful, for example, in estimating the extent of environmental and user exposure in the process of determining environmental and user safety.

(Comment 9) One comment suggested that requestors of an informal conference have an opportunity to read and respond to the minutes of an informal conference within 30 days.

(Response) This comment raises two issues which the agency needs to address and clarify in the final regulation. The first issue relates to whether the person requesting an informal conference should have the opportunity to review and comment on a summary of the informal conference. The agency believes that the requestor should have such an opportunity. In framing the comment in the context of the ''minutes of an informal conference,'' the comment also raises an issue regarding what sort of a summary of the informal conference the person requesting an informal conference should have an opportunity to review and comment on. In this context, the agency has reconsidered the requirement in the proposed regulation for the preparation of both a ''written summary'' of the conference and a

''written report'' of the conference. The latter was intended to parallel the written report associated with a 21 CFR part 16 informal hearing, and was intended to be more comprehensive than simply a ''written summary of the conference'' or the ''minutes of an informal conference'' as expressed in the comment. The agency believes that the requestor of an informal conference should have an opportunity to review and comment on the written report of the informal conference. We have revised § 516.123(k) to provide for such a review whenever time permits. That being the case, the agency believes that a written summary of the informal conference is superfluous and this requirement, which was proposed by means of §§ 516.123(j) and 516.123(l)(3), has been removed from the final regulation.

(Comment 10) Two comments requested clarification of different aspects of the early, non-food life-stage provision of the proposed regulations.

(Response) As stated in the preamble to the proposed regulations, the early, non-food life-stage provision of the statute and implementing regulations will be applicable only in limited circumstances, and the safety of food eventually derived from such animals will be determined in accordance with the safety standards of 512(d) of the act.

The agency has currently identified only early, non-food life stages of some aquatic species, such as certain fish eggs and mollusc larvae, as likely to be able to meet this standard. There is no explicit statutory restriction of this provision to aquatic minor species, although the statutory restriction to products intended only for use in a hatchery, tank, pond or other similar contained man-made structure tends to exclude terrestrial species. The agency has yet to identify a terrestrial species that it feels is likely to qualify under this provision of the statute, but has not ruled out the possibility that some terrestrial minor species could qualify.

The agency is unable at this time to establish any general criteria regarding ages, sizes, amount of time between early, non-food life stages and later food life stages, or biological developmental processes that can predict the applicability of this provision of the act. Nor is the agency able to make any general statements regarding how much information of what sort will be necessary to meet the requirements of 512(d) of the statute. These issues depend upon the drug and the minor species involved in each particular case.

(Comment 11) One comment asserted that the revenue to be expected from some segments of the minor species market may not justify the estimated administrative costs for indexing cited in the proposed rule. The comment is concerned with needed medicated feeds, especially for zoo and laboratory animals. The comment proposes that an ''exemption'' should be provided in cases where sales will not offset these costs. Specifically, the comment suggests that a threshold sales level should be set ($100,000 is recommended) above which indexing would be required, but below which an expanded policy of regulatory discretion would be provided.

The comment also notes that the inability to alter the nutrition and physical form of an approved medicated feed to suit use in a minor species limits the utility of the existing regulatory discretion policy (Compliance Policy Guide (CPG) 615.115) for the extra-label use of medicated feed in minor species. Therefore, it is suggested that a new policy of regulatory discretion based on customer formulated feeds be incorporated into the MUMS indexing rule for the intended uses that fall below the proposed sales threshold.

(Response) The lack of medicated feeds legally available to minor species is recognized by the agency. The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Pub. L. 103–396) provides for certain extra-label uses of new animal drugs by veterinarians, but specifically prohibits extra-label use of medicated feeds. The CPG is intended to be a limited exercise of regulatory discretion regarding access to needed medicated feeds for some minor species. The indexing provision was included in the MUMS act partly to address this concern. It is intended to provide *legal* means for sponsors to provide these much-needed formulations to non-food minor species animals, like the zoo species cited in this comment. The agency recognizes that indexing will not provide for the legal availability of drugs for minor species under all circumstances. However, the exercise of regulatory discretion does not provide legal access under any circumstances.

The administrative cost of indexing, as cited in the proposed rule, is an estimate of the average cost of indexing a new animal drug. The enormous variety of species and products will be reflected in the range of complexity of indexing these products. Variables such as the number of species to be included in the intended use, the availability of scientific literature and experts, whether or not the drug has already been approved in other species or formulations, etc. will have a significant effect on the cost of completing a request for indexing. Simple requests for indexing can be expected to require less time to prepare and, therefore, will be less costly than the estimate, while others may be more involved and will require more time.

The agency will nonetheless continue to consider the exercise of regulatory discretion under appropriate circumstances and, as it gains experience with the indexing process, will consider whether it should make any changes to CPG 615.115.

(Comment 12) One comment was received in regard to the proposed conforming changes to parts 201 and 202 (21 CFR parts 201 and 202). This comment stated that the addition of indexing references to these parts of 21 CFR will add very specific requirements to the labeling and advertising process for an unapproved drug.

(Response) Part 201 pertains to drug labeling. The proposed conforming changes to part 201 are in subpart D which is entitled ''Exemptions for Adequate Directions for Use.'' The regulations in this subpart describe situations where new drug and new animal drug labeling would be exempt from the misbranding requirements of section 502(f)(1) of the act or provide clear descriptions of specific labeling information required to avoid misbranding under section 502(f)(1) of the act. Specifically, § 201.105 describes what information must appear on prescription new animal drug labeling and § 201.122 describes what information must appear on drugs for processing, packing, or manufacturing. The agency believes these same exemptions and clear descriptions should be available for index listed drugs and does not believe that the specific labeling requirements described in this subpart for approved new animal drugs are overly burdensome for index listed drugs. Furthermore, the labeling requirements for prescription new animal drugs described in § 201.105 are necessary for the safe and effective use of such drugs whether they are approved or index listed.

Part 202 pertains to prescription drug advertising. The conforming change to § 202.1 will require that prescription drug advertising for index listed drugs shall not recommend or suggest any use that is not in the labeling accepted in such index listing and that the advertisement shall present information from labeling granted in the listing relating to each specific side effect and contraindication in such labeling that relates to the uses of the advertised drug dosage form(s). Section 202.1 currently contains this same provision for new animal drugs that are approved under section 512 of the act and for new drugs

that are approved under section 505 of the act. We do not believe this conformation to current regulations is unreasonable.

(Comment 13) One comment expressed confusion regarding whether unapproved index listed products that are drug listed under the provisions of part 207 (21 CFR part 207) are subject to product user fees under Animal Drug User Fee Act of 2003 (ADUFA).

(Response) Unapproved new animal drugs that are index listed under section 572 of the act are not subject to product user fees under ADUFA (Pub. L. 108–130). Unless specifically exempted, all new animal drugs that are in commercial distribution, whether approved or not, are subject to the drug listing requirements of part 207 (see § 207.20). However, to be subject to a product user fee, an animal drug product must not only be subject to the drug listing requirements of part 207, but also approved as either an animal drug application or supplemental animal drug application (see section 740(a)(2) of the act). As defined under ADUFA, these applications do not include drugs that are index listed under section 572 of the act (see section 739(1) and (2) of the act).

(Comment 14) One comment asked for clarification on why certain conforming changes to the regulations in part 510 for approved drugs were proposed to apply to index listed drugs.

(Response) Three sections in part 510 contain conforming changes. Those sections apply to new animal drugs, which means they apply to index listed drugs because they are new animal drugs. The conforming changes are needed so it is clear how these provisions apply in the context of index listed drugs. For example, § 510.301 describes the reporting and recordkeeping requirements for licensed medicated feed mills concerning experience with new animal drugs when used in or on animal feeds. Previously, the regulation said the records and report must be appropriately identified with the new animal drug application(s) to which they relate. The conforming amendment adds ''or index listing(s)'' to which they relate. Similarly, one of the items to be reported is any failure of the drug to meet specifications established for it in the new animal drug application. This is being amended to include specifications established in the request for determination of eligibility for indexing. Conforming amendments are also made in § 510.305, which requires licensed medicated feed mill operators to maintain approved labeling for each Type B and/or Type C feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated, and § 510.455, which describes the requirements for manufacturing a free-choice medicated animal feed.

(Comment 15) One comment stated that due to the prohibitive cost of production of small quantities of separately labeled product, the requirement for labeling indexed drugs separately from approved drugs could be a deterrent for indexing useful drugs that are already approved in major species. The comment suggested that adequate distinction could be required on existing labeling to provide the indexed claims as well as information on the approved labeling.

(Response) New animal drug labeling that contains information derived from both an application approved under section 512(b) of the act and from an index listing granted under section 572 of the act (572 index listing) would be misbranded under section 502(w)(2) of the act and would cause the new animal drug to be unsafe under section 512(a)(1)(A) and (C) of the act. Simply put, in this situation, the labeling information derived from the 512(b) approval does not conform with the 572 index listing, and the labeling information derived from the 572 index listing does not conform with the 512(b) approval. For example, under section 572(h) of the act, the labeling of an index listed drug must include the statement ''NOT APPROVED BY FDA.—Legally marketed as an FDA indexed product.'' Such a statement would be false on the labeling of a product approved under section 512(b) of the act because that product has been approved by FDA.

(Comment 16) One comment requested clarification on the statement in proposed § 516.155 to the effect that a product cannot be utilized in an extra-label manner once it is indexed. The comment said that this could be prohibitive to the veterinarian's ability to utilize an approved medication off label when needed if it has also been indexed.

(Response) Under § 516.155, the label of an indexed drug must state that extra-label use is prohibited. This statement is based on section 572(h) of the act. However, this statement prohibiting extra-label use of new animal drugs indexed under section 572 of the act does not impose any restrictions, beyond those that already existed, on the extra-label use of new animal drugs approved under section 512(b) of the act.

The extra-label use of an approved new animal drug is not permitted when ''the labeling of another animal drug that contains the same active ingredient which is in the same dosage form and concentration'' provides for the same use as a contemplated extra-label use (section 512(a)(4)(A) of the act). We believe that the reference to ''another animal drug'' in this provision means a new animal drug that, like the drug to be used in an extra-label manner, has been approved under section 512(b) of the act, and that it does not include a new animal drug that has been indexed under section 572 of the act. The regulations implementing the extra-label use provisions of section 512 of the act provide that one of the conditions for the extra-label use of an approved new animal drug is that ''there is no *approved* new animal drug that is labeled for such use and that contains the same active ingredient which is in the required dosage form and concentration'' (§§ 530.20(a)(1) (emphasis added) and 530.30(a)). Based on our interpretation of the act, we do not believe the condition in this regulation should be broadened to reference indexed drugs along with approved drugs. Thus, if a new animal drug is index listed for intended use A, for example, and the same active ingredient in the same dosage form is approved for intended use B, then the approved drug may be used in an extra-label manner for intended use A, as long as all other provisions of 21 CFR part 530 have been met.

(Comment 17) One comment noted that the preamble failed to explicitly state that indexed drugs may fall into one of three categories: Over-the-counter, prescription, and veterinary feed directive (VFD).

(Response) We agree that index listed drugs may fall into one of these three categories. Prescription status for index listed drugs is provided for in section 503(f)(1)(A)(ii) of the act and VFD status is provided for in section 504(a)(1) of the act. The current regulations in title 21 of the CFR have been revised accordingly by conforming change in this rulemaking at § 201.105, § 202.1, § 558.3, and § 558.6.

(Comment 18) One comment stated that it appears that there can be a number of holders of the same product listed in the index, in other words, there is no exclusivity associated with index listing.

(Response) We agree. There are no exclusive marketing rights associated with index listed drugs, such as are provided for MUMS-designated approved and conditionally approved drugs under section 573(c) of the act.

(Comment 19) One comment requested clarification regarding whether proposed § 516.125(d) meant that target animal safety studies done under an index investigational new animal drug (INAD) were not required to be conducted in accordance with good laboratory practices (GLPs).

(Response) While the agency encourages adherence to GLPs to the maximum extent possible, the comment is correct that target animal safety studies in support of an index listing are not required to be conducted under GLPs. Qualified expert panels may consider all available information in reaching their conclusions regarding target animal safety and effectiveness, including target animal safety studies that do not meet the GLP standards of 21 CFR part 58.

(Comment 20) One comment stated that the agency's estimated costs to a MUMS index drug requestor appeared to be reasonable and accurate. However, the comment also stated that, as a result of the fees referred to in § 516.141(g)(4), costs for complex reviews requiring extensive panel time may be dramatically higher than simple reviews that can be quickly completed. The comment suggested that, in an effort to contain such costs, avoid economic discrimination, and increase participation in the indexing process, the agency should consider, at least for an initial period of time, establishing a uniform fee of $10,000 for indexing requests.

(Reponse) FDA anticipates that some expert panel members may charge requestors a fee for their professional services. § 516.141(g)(4) recognizes this fact and states that if such professional fees are paid they should be no more than commensurate with the value of the time that the member devotes to the review process in order to avoid a conflict of interest or the appearance of a conflict of interest. This cost to requestors is also discussed in the Analysis of Economic Impacts section of the proposed rule and this final rule. While the agency supports, in principle, efforts to contain costs and increase efficient utilization of the indexing process, the agency believes that, § 516.141(g)(4) notwithstanding, it should not be involved in establishing or otherwise regulating fees for the work expert panel members provide to the requestor as part of the indexing process.

(Comment 21) One comment suggested that a requestor not necessarily be a particular firm, but potentially a group of individuals or organizations each of which could contribute to the indexing process.

(Response) Under the new animal drug approval process, information gathered from multiple sources can be placed into master files from which the information can be referenced in support of one or more new animal drug applications. Master files can contain public or proprietary information relating to, for example, manufacturing processes. The indexing rule does not prevent different individuals or groups from contributing to the indexing of a drug product using this type of a master file mechanism, and FDA intends to allow for such master files to be used in the context of indexing.

(Comment 22) One comment requested clarification of the post-indexing reporting requirements for chemistry, manufacturing, and control (CMC) information and whether they will be the same as the Minor Changes and Stability Reporting (MCSR) process.

(Response) MCSR, as required by 21 CFR 514.8(b)(4), does not apply to indexed drugs. Under § 516.161(b)(1), changes in manufacturing methods or controls required to correct product or manufacturing defects that may result in serious adverse drug events should be made as soon as possible and a request to modify the indexed drug should be concurrently submitted to the Director, Office of Minor Use and Minor Species Animal Drug Development (OMUMS). Under § 516.165(c)(3)(iii), the annual indexed drug experience report must contain a summary of any changes made during the reporting period in the methods used in, and facilities and controls used for, manufacture, processing, and packing. This information must be presented in the same level of detail that it was presented in the request for determination of eligibility for indexing. The information is not included in this report, however, if it has already been submitted under § 516.161.

(Comment 23) One comment stated that proposed § 516.165(a)(3) appeared to be inconsistent with proposed § 516.165(c)(3)(iii) in that § 516.165(a)(3) implied that indexed drugs must meet all ''approved CMC requirements'' while § 516.165(c)(3)(iii) implied that CMC information only needed to be reported in the level of detail it was originally described in the indexing request.

(Response) The comment is correct that under § 516.165(c)(3)(iii), changes in the manufacturing process subsequent to product indexing need to be reported only to the level of detail that the manufacturing process was described in the original request for a determination of eligibility for indexing. However, section 572(d)(1)(F) of the act requires, as a condition of indexing, that requestors affirmatively commit to manufacture the drug product proposed for indexing according to current good manufacturing practices (cGMP). Accordingly, § 516.165(a)(3) reflects the requirement for the manufacturer of an indexed drug to meet the record-keeping requirements of the cGMP regulations, and that this requirement is *in addition* to annually reporting the relatively limited CMC information required by § 516.165.

(Comment 24) One comment indicated that, with respect to occupational and user safety, the proposed regulations provided ''no regulatory relief from the statutory requirement for an indexed drug.''

(Response) This is an accurate observation. The regulations, §§ 516.129(c) and 516.133(a), are consistent with section 572(c)(1)(F) and (c)(2)(E) of the act in this regard. Both the regulations and the statutory provisions they implement require that this aspect of product safety be assessed in accordance with the requirements of section 512(d) of the act.

(Comment 25) One comment stated that references to ''statutory criteria'' in the preamble were unclear, raising the question whether the qualified expert panel and the agency would be subject to the evidentiary standards of section 512 or to those of section 572.

(Response) The comment failed to specifically identify where in the preamble the unclear references to statutory criteria appeared, but the agency presumes that it was in the introductory paragraph of section II. F. (71 FR 48840 at 48842 and 48843). This paragraph describes the two-part indexing review process established by the act, which includes a review of whether the new animal drug meets the statutory criteria regarding target animal safety and effectiveness.

The standard for target animal safety and effectiveness is established, with respect to expert panels, under section 572(d)(2)(C) of the act and, with respect to the agency, under section 572(d)(4) as: The benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm being caused by the absence of an approved or conditionally approved new animal drug for the minor species in question.

IV. Conforming Changes

Conforming changes to certain applicable sections of title 21 of the Code of Federal Regulations (CFR) can be found in:

§ 20.100 *Applicability; cross-reference to other regulations*.

§ 25.20 *Actions requiring preparation of an environmental assessment.*

§ 25.33 *Animal drugs.*

§ 201.105 *Veterinary drugs.*

§ 201.115 *New drugs or new animal drugs.*

§ 201.122 *Drugs for processing, repacking, or manufacturing.*

§ 202.1 *Prescription-drug advertisements.*

§ 207.21 *Times for registration and drug listing.*

§ 207.35 *Notification of registrant; drug establishment registration number and drug listing number.*

§ 225.1 *Current good manufacturing practice.*

§ 225.35 *Use of work areas, equipment, and storage areas for other manufacturing and storage purpose.*

§ 225.135 *Work and storage areas.*

§ 226.1 *Current good manufacturing practice.*

§ 500.25 *Anthelmintic drugs for use in animals.*

§ 500.26 *Timed-release dosage form drugs.*

§ 510.301 *Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved medicated feed mill license application is in effect.*

§ 510.305 *Maintenance of copies of approved medicated feed mill licenses to manufacture animal feed bearing or containing new animal drugs.*

§ 510.455 *Requirements for free-choice medicated feeds.*

§ 511.1 *New animal drugs for investigational use exempt from section 512(a) of the act.*

§ 515.10 *Medicated feed mill license applications.*

§ 515.21 *Refusal to approve a medicated feed mill license application.*

§ 558.3 *Definitions and general considerations applicable to this part.*

§ 558.5 *Requirements for liquid medicated feed.*

§ 558.6 *Veterinary feed directive drugs.*

§ 589.1000 *Gentian violet.*

V. Legal Authority

FDA's authority for issuing this final rule is provided by the MUMS act (21 U.S.C. 360ccc *et seq.*). When Congress passed the MUMS act, it directed FDA to publish implementing regulations (see 21 U.S.C. 360ccc note). In the context of the MUMS act, the statutory requirements of section 572 of the act, along with section 701(a) of the act (21 U.S.C. 371(a)) provide authority for this final rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act.

VI. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities.

FDA finds that the final rule does not constitute an economically significant regulatory action as defined in 3(f)(1) of Executive Order 12866. We base this on the following analysis that estimates annual costs ranging from about $476,000 in the first year to about $869,000 in the 10th year. Similarly, the administrative costs are unlikely to have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before establishing ''any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) implicit price deflator for the gross domestic product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount. As such, no further analysis of anticipated costs and benefits is required by the Unfunded Mandates Reform Act.

A. Summary

The final rule is expected to result in about 30 requests for a determination of eligibility for indexing for 60 products annually, or 2 per requestor. We estimate that requestors for 20 of these products will create and convene expert panels to review the safety and efficacy data. Further, the recommendations of these panels are expected to lead to the addition of 20 animal drug index listings each year.

B. Comments on Proposed Rule

FDA received six comments to the proposed rule, none of which contained substantive comments on the methodology used in the analysis of impacts of the proposed rule. As such, we have retained the methodology for the analysis of the final rule. Our requests in the analysis of impacts section of the proposed rule for additional cost data did not elicit any data that conflicted with our estimates. We did, however, receive one comment that suggested the paperwork reporting burden may be too low. We revised the economic impacts associated with the paperwork reporting burden, as well as made other small changes to the final rule due to other public comments. We address comments on individual components and any changes made to the final rule in the administrative cost section.

C. Benefit

This rule intends to create administrative practices and procedures for index listing a new animal drug for use in a minor species, thereby providing the benefit of a legal basis for marketing an unapproved new animal drug intended for use in a minor species. The need for the rule arises from the existence of some minor species populations that are too small to support traditional drug approval studies. The countervailing risk of this rule is that animal drugs that are marginally economically viable could use this system to avoid the traditional animal drug approval process. Under this final rule, however, the voluntary indexing of a new animal drug for use in a minor species would only be allowed when the same drug in the same dosage form for the same intended use is not already approved or conditionally approved, thereby reducing this risk.

D. Administrative Costs

This section will describe and estimate the annual administrative costs by provision for both producers of currently unapproved drugs that would request an index listing and FDA. First, we address the efforts required by requestors concerned with index listing. The estimates of the number of requestors, frequencies of responses, and hours per procedure for each of the provisions of the final rule were determined by Center for Veterinary Medicine (CVM) personnel for the proposed rule. Labor hour estimates for some procedure have been amended in this final rule due to public comments.

We estimate that, on average, two foreign requestors of drug indexing would need to hire a permanent resident agent to represent them. We expect this to require about 1 hour of

administrative time for a requestor's management employee in regulatory affairs. We estimate the loaded wage estimate at $42.29 per hour (including a 30 percent increase for benefits) for regulatory affairs personnel.[1] This provision would cost the two requestors a total of about $85. We expect that a resident agent would expend only about 6 hours of administrative effort per year per indexed drug. We estimate the wage rate of the resident agent at $100 to $150 per hour, and use the midpoint, $125, for our calculations. Total annual costs for resident agents are estimated at $1,500 (two agent times 6 hours times $125 per hour) in the first year. In the 10th year this is expected to rise to about $15,000 as two more resident agents each provide 6 more hours of administrative effort each additional year.

Section 516.121 of the final rule provides for one or more meetings between requestors and FDA to discuss the requirements for indexing a new animal drug. We estimate that 30 requestors will each request, on average, 2 meetings annually, for a total of 60 meetings. Preparation and participation in these meetings is estimated at 4 hours each, for an annual total of 240 hours.

Section 516.123 concerns informal conferences regarding agency administrative actions. These would include conferences to discuss a request for determination of eligibility that has been denied, the removal of an expert panel member, a request for indexing that was denied or an indexed drug that was removed from the list. In response to public comments, we have provided for a 60-day time period for industry to respond with a written request for a conference, rather than the proposed 30-day time period. Additionally, we have amended the final rule to require that an informal conference be scheduled and held within a 45-day period from our receipt of a request for an informal conference. The proposed rule would have required that we only attempt to schedule and hold the conference within 30 days. We do not expect these two changes to have an impact on the cost estimates of this provision. We estimate that about three requestors would request one conference with us annually for any of these reasons. We expect that each requestor would expend about 8 hours (24 hours total) to prepare for and attend each of these conferences. The combined efforts for preparation and participation in all conferences (§ 516.123) are estimated at 264 hours (240 plus 24). At the same loaded wage estimate of $42.29 per hour, this provision is expected to cost about $11,200 annually.

For section 516.125, we estimate that two requestors would each annually submit three notices of claimed investigational exemptions for new animal drugs for index listing. We estimate that each submission would require about 20 hours for regulatory affairs personnel to prepare. At the loaded wage estimate of $42.29 per hour, the total of 120 hours would cost about $5,100.

We estimate that about 30 requestors would each average about 2 requests for determination of eligibility for indexing of individual animal drugs annually, totaling to 60 requests annually for proposed § 516.129. Based on a public comment that the paperwork burden was underestimated in the proposed rule, we have increased the number of labor hours for preparing each request from 12 to 20. At the loaded wage estimate of $42.29 per hour, this provision would require about 1,200 hours equal to about $50,700. Included in this estimate of 60 requests are any resubmitted requests that were previously denied.

Section 516.141 requires the creation of a qualified expert panel to review all information, provided by any source, relevant to a determination of the target animal safety and effectiveness of the new animal drug. We are required to approve the panel members before the panel formally convened. We estimate that requestors of 20 animal drugs, or about one-third of the 60 animal drugs that annually are determined to be eligible for indexing, would create qualified expert panels to further study the safety and efficacy data. The creation of each panel by a requestor is estimated to take about 16 hours of effort by regulatory affairs personnel. This figure has been increased from the 8 hours estimated in the proposed rule based on a public comment. At the same loaded wage estimate, these 320 hours are estimated at about $13,500 annually. An additional 0.5 hours is estimated for recordkeeping for the creation of the qualified panels described in § 516.141. This would result in an additional $400 in annual costs.

Section 516.143 describes how the expert panel will prepare a written report for FDA with its findings concerning the new animal drug under consideration for index listing. The review of the relevant information and preparation of the report by each panel would take an estimated 120 hours, an increase from the 80 hours estimated for the proposed rule. This equates to 2,400 hours for 20 panels. The rule allows for fees to be paid to panel members for their time. We estimate the average wage rate for panel members at $100 to $150/hr, and use the midpoint ($125) in our calculations. At this wage, we estimate these activities to cost up to $300,000 annually for the total industry, or $15,000 per requestor for each animal drug under consideration.

We estimate that the formal request for addition to the index, provided for in § 516.145, will require about 20 hours to prepare, an increase from the 12 hours estimated in the proposed rule. This will result in another 400 hours of effort (20 requests times 20 hours) for regulatory affairs personnel. We project the compliance cost of this effort at $16,900 annually.

We only expect to receive one request each for a modification to an indexed listed drug and a change in ownership of an index file annually (provided for in proposed §§ 516.161 and 516.163), and estimate the preparation of each to require 4 and 2 hours, respectively. In total, these compliance efforts will cost about $250 in the first year. Total modification requests and ownership change notifications are expected to increase by one each year so that 10 of each would be expected to be submitted in year 10. The cost of these provisions in year 10 is estimated at about $2,500. This final rule will require, in § 516.165, that records and reports be created, submitted and retained by the holder of the indexed drug. These records include a 3-day indexed drug field alert report, a 15-day indexed drug field alert report and an annual indexed drug experience report. We expect that the vast majority of compliance efforts will be associated with the annual indexed drug experience report. Because the number of expected requests that are granted for addition to the index is 20 per year (on average, 20 requestors with 1 request granted each), the number of reports to be created, submitted and stored is also estimated at 20 per year. We estimate the reports for each index listing will require 8 hours annually, totally about 160 hours for all 20 listings. At the loaded wage estimate of $42.29 per hour, we estimate the first-year reporting costs at about $6,800. These annual costs will increase by an additional $6,800 each year as an additional 20 indexed drugs are added to the list. In year 10 we estimate the cost of this provision at about $67,700. Further, we expect that the maintenance of these records (recordkeeping) will require an additional hour of administrative time for each indexed

[1] 2004 National Industry-Specific Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics (*www.bls.gov/oes/current/naics4_325400.htm*); compliance officer wage rate for pharmaceutical and medicine manufacturing (NAICS 325400).

drug listing. These additional 20 hours will cost about $850 at the same loaded wage estimate in the first year, and would also increase in succeeding years by an additional $850 as additional indexed drugs are added to the list. We estimate the cost of this provision in year 10 at about $8,500.

For those choosing to seek a MUMS index listing of an unapproved animal drug, total requestor compliance costs are expected to sum to about $407,000 in the first year. This represents an increase of $134,000 from the $273,000 estimated cost of the proposed rule. These costs will be borne by 30 firms that make a request for determination of eligibility for indexing at an average cost per requestor of about $13,600 per submission. Including only those estimated 20 firms that followup with a request for addition to the index, we project average costs at about $19,000. Costs in succeeding years would be expected to increase slightly due to the annual reporting requirements for all indexed drugs, resulting in year–10 total costs for the industry at about $492,000.

E. Costs to Government

The Government would also incur costs for this final rule. We expect that about 60 percent of a full-time equivalent employee at a GS–14 salary would be needed to handle the administrative work of the indexing of MUMS drugs in the first year. This would include all administrative efforts from responding to requests for presubmission meetings to making changes to approved indexed drugs. We estimate Government costs (including a 30 percent adjustment for benefits) of this provision at about $69,000 in the first year. In year 10 we estimate that up to four full time equivalent employees (one GS–14 position, two GS–13 positions and one GS–11 position) would be needed to administer the program. Including a 30 percent adjustment for benefits, we estimate that the cost to Government in year 10 could increase to about $378,000.

Total costs for this final rule would be the sum of private administrative and Government costs. Total costs are estimated to increase from $476,000 in the first year up to $869,000 in the 10th year.

F. Regulatory Flexibility Analysis

1. Small Business Impacts

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact on a substantial number of small entities. Although we believe it is unlikely that significant economic impacts would occur, the following constitutes the final regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, with this rule the agency intends to create an administrative system, provided for by statute, that would allow for the legal marketing of unapproved animal drugs for use in minor species in the U.S. that would otherwise not be economically viable under current market conditions.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) defines the criteria for small businesses using the North American Industrial Classification System (NAICS). For pharmaceutical preparation manufacturers (NAICS number 325412), SBA defines small businesses as those with fewer than 750 employees. Census data shows that 723 companies with 901 establishments represent this category.[2] While about two-thirds of the establishments would be considered small using the SBA criteria, the agency acknowledges that many requests for MUMS index listing would likely be received from multi-establishment companies that exceed the 750–employee limit on small businesses. Nonetheless, the average cost for a requestor that has two meetings with us, requests a determination of eligibility for indexing, creates and convenes a qualified panel of experts resulting in a written report, requests an addition to the index and keeps all necessary records, would be about $19,000. This cost per request represents about 2.1 percent of the revenues of the smallest set of establishments (those establishments with 1 to 4 employees), and 0.5 percent or less of revenues of all larger establishments.[3] These costs would not represent a significant economic impact on the firms expected to request an index listing, especially in light of the fact that they incur these expenses in order to realize increased sales revenue from the indexing. The firms submitting requests for index listing are expected to already have the necessary administrative personnel with the skills required to prepare the requests and fulfill reporting requirements as identified above.

2. Analysis of Alternatives

The Regulatory Flexibility Act requires that the agency consider any alternatives to the final rule that would accomplish the objective while minimizing significant impacts of the rule. As stated previously, the agency believes that the final rule, due to the relatively small size of the costs, would not be likely to impose significant economic impacts on a substantial number of small entities.

The statute that creates this system, Public Law 108–282, does not provide the agency a great deal of flexibility in the implementing regulations, such as in determining whether or not to use independent qualified expert panels to review the safety and efficacy data. We conclude that the final rule achieves the objective of increasing the number of drugs that can be legally marketed for minor species with minimal costs to industry while staying within the limits set by Public Law 108–282.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Index of Legally Marketed Unapproved New Animal Drugs for Minor Species 21 CFR part 516.

Description: The Minor Use and Minor Species Animal Health Act of 2004 (MUMS act) amended the Federal Food, Drug, and Cosmetic Act (the act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats), as well as uncommon diseases in major animal species.

The MUMS act created three new sections to the act (section 571, 572, and 573), and this final rule implements section 572 of the act, which provides for an index of legally marketed unapproved new animal drugs for minor species. Participation in any part of the MUMS program is optional so the associated paperwork only applies to

[2] 2002 Economic Census, U.S. Census Bureau, Manufacturing Industry Series, Pharmaceutical Preparation Manufacturing, tables 3 and 4.

[3] U.S. Department of Labor, Bureau of Labor Statistics. 2002 revenues inflated to 2007 dollars using the CPI–U.

those who choose to participate. The final rule specifies, among other things, the criteria and procedures for requesting eligibility for indexing and for requesting addition to the index as well as the annual reporting requirements for index holders.

Under the new subpart C of part 516 (21 CFR part 516), § 516.119 provides requirements for naming a permanent-resident U.S. agent by foreign drug companies, and § 516.121 provides for informational meetings with FDA. Section 516.123 provides requirements for requesting informal conferences regarding agency administrative actions and § 516.125 provides for investigational use of new animal drugs intended for indexing. Provisions for requesting a determination of eligibility for indexing can be found under § 516.129 and provisions for subsequent requests for addition to the index can be found under § 516.145. A description of the written report required in § 516.145 can be found under § 516.143. Under § 516.141 are provisions for drug companies to nominate a qualified expert panel as well as the panel's recordkeeping requirements. This section also calls for the submission of a written conflict of interest statement to FDA by each proposed panel member. Index holders are able to modify their index listing under § 516.161 or change drug ownership under § 516.163. Requirements for records and reports are under § 516.165.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
516.119	2	1	2	1	2
516.121	30	2	60	4	240
516.123	3	1	3	8	24
516.125	2	3	6	20	120
516.129	30	2	60	20	1,200
516.141	20	1	20	16	320
516.143	20	1	20	120	2,400
516.145	20	1	20	20	400
516.161	1	1	1	4	4
516.163	1	1	1	2	2
516.165	10	2	20	8	160
Total					4,872

[1]There is no capital or operating and maintenance cost associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
516.141	30	2	60	0.5	30
516.165	10	2	20	1	20
Total					50

[1]There is no capital or operating and maintenance cost associated with this collection of information.

FDA announced that the proposed rule contained information collection provisions that were subject to review by OMB under the Paperwork Reduction Act of 1995 and invited public comment in the **Federal Register** of August 22, 2006 (71 FR 48840). In response to that notice FDA received two comments concerning the estimated paperwork reporting burden. One comment said that the estimates appear to be reasonable and accurate while the other comment said that some were potentially underestimated. Specifically, the second comment felt that the agency's estimates for the hours per response were too low for the time required for creation of an expert panel by regulatory professionals in § 516.141 and for the time required to prepare the written report in § 516.143. Although the comment did not offer new estimates for these sections, FDA agrees that these estimates may be too low. Therefore, FDA believes that 16 hours is a more reasonable response time required for creation of an expert panel. In view of increased reporting requirements under § 516.141, CVM has increased the ''Hours per Response'' under this citation in ''Table 1. Estimated Annual Reporting Burden,'' from 8 to 16 hours thereby increasing the total burden hours to 320. FDA also believes that 120 hours is a more reasonable response time required to prepare the written report. In view of increased reporting requirements under § 516.143, CVM has increased the

''Hours per Response'' under this citation in ''Table 1. Estimated Annual Reporting Burden,'' from 80 to 120 hours thereby increasing the total burden hours to 2400.

The second comment also proposed 20 to 80 hours of response time for preparation of a request for determination of eligibility and 20 to 80 hours of response time for preparation of a request for addition to the index. FDA agrees, in light of both comments, that 20 hours is a more reasonable response time required to prepare each of these two submissions. In view of increased reporting requirements under § 516.129, CVM has increased the ''Hours per Response'' under this citation in ''Table 1. Estimated Annual Reporting Burden,'' from 12 to 20 hours thereby increasing the total burden hours to 1,200. For § 516.145, CVM has also increased the ''Hours per Response'' in ''Table 1. Estimated Annual Reporting Burden,'' from 12 to 20 hours thereby increasing the total burden hours for this section to 400.

The second comment also requested clarification on the time allotted for the notice of claimed investigational exemption in § 516.125. This reporting burden accounts for the time required to prepare information pertinent to the safety or effectiveness of a drug derived from investigational studies for review by the expert panel.

Finally, it should be noted that FDA received no comment on the proposed conforming changes to 21 CFR 515.10(b) which describes what information must be contained in a medicated feed mill license application. Accordingly, the agency is revising Form FDA 3448 Medicated Feed Mill License Application (OMB No. 0910–0337) to reflect these minor conforming changes. This revision will not change the information reporting burden already approved for this form. It merely revises one of the certifications to reflect the fact that new animal drugs now include index listed drugs.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. Environmental Impact

We have carefully considered the potential environmental impacts of this final rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 202

Advertising, Prescription drugs.

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 511

Animal drugs, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 515

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

21 CFR Part 589

Animal feeds, Animal foods, Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Amend § 20.100 by adding paragraph (c)(44) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(44) Minor-species drug index listings, in § 516.171 of this chapter.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 3. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

■ 4. Amend § 25.20 by revising paragraph (m) to read as follows:

§ 25.20 Actions requiring preparation of an environmental assessment.

* * * * *

(m) Approval of NADA's, abbreviated applications, supplements, actions on

INAD's, and granting of requests for determination of eligibility for indexing, unless categorically excluded under § 25.33 (a), (c), (d), or (e).

* * * * *

■ 5. Amend § 25.33 by revising paragraphs (a) introductory text, (c), (d) introductory text, and (g) to read as follows:

§ 25.33 Animal drugs.

* * * * *

(a) Action on an NADA, abbreviated application, request for determination of eligibility for indexing, a supplement to such applications, or a modification of an index listing, if the action does not increase the use of the drug. Actions to which this categorical exclusion applies may include:

* * * * *

(c) Action on an NADA, abbreviated application, request for determination of eligibility for indexing, a supplement to such applications, or a modification of an index listing, for substances that occur naturally in the environment when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

(d) Action on an NADA, abbreviated application, request for determination of eligibility for indexing, a supplement to such applications, or a modification of an index listing, for:

* * * * *

(g) Withdrawal of approval of an NADA or an abbreviated NADA or removal of a new animal drug from the index.

* * * * *

PART 201—LABELING

■ 6. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 7. Amend § 201.105 by revising paragraphs (c)(2) and (d)(1) to read as follows:

§ 201.105 Veterinary drugs.

* * * * *

(c) * * *

(2) If the article is subject to section 512 or 572 of the act, the labeling bearing such information is the labeling authorized by the approved new animal drug application or contained in the index listing: *Provided, however*, That the information required by paragraph (c)(1) of this section may be omitted from the dispensing package if, but only if, the article is a drug for which directions, hazards, warnings, and use information are commonly known to veterinarians licensed by law to administer the drug. Upon written request, stating reasonable grounds therefore, the Commissioner will offer an opinion on a proposal to omit such information from the dispensing package under this proviso.

(d) * * *

(1) Adequate information for such use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant warnings, hazards, contraindications, side effects, and precautions, and including information relevant to compliance with the new animal drug provisions of the act, under which veterinarians licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended, including all conditions for which it is advertised or represented; and if the article is subject to section 512 or 572 of the act, the parts of the labeling providing such information are the same in language and emphasis as labeling approved, permitted, or indexed under the provisions of section 512 or 572, and any other parts of the labeling are consistent with and not contrary to such approved, permitted, or indexed labeling; and

* * * * *

■ 8. Amend § 201.115 by revising paragraphs (a) and (b) to read as follows:

§ 201.115 New drugs or new animal drugs.

* * * * *

(a) To the extent to which such exemption is claimed in an approved application with respect to such drug under section 505 or 512 of the act or an index listing with respect to such drug under section 572 of the act; or

(b) If no application under section 505 or 512 of the act is approved and no request for addition to the index is granted under section 572 with respect to such drug but it complies with section 505(i), 512(j), or 572(g) of the act and regulations thereunder.

* * * * *

■ 9. Amend § 201.122 by revising paragraphs (a), (b), and (c) to read as follows:

§ 201.122 Drugs for processing, repacking, or manufacturing.

* * * * *

(a) An approved new drug application or new animal drug application or a new animal drug index listing covers the production and delivery of the drug substance to the application or index listing holder by persons named in the application or in the request for determination of eligibility for indexing, and, for a new drug substance, the export of it by such persons under § 314.410 of this chapter; or

(b) If no application is approved with respect to such new drug or new animal drug, and it is not listed in the index, the label statement ''Caution: For manufacturing, processing, or repacking'' is immediately supplemented by the words ''in the preparation of a new drug or new animal drug limited by Federal law to investigational use'', and the delivery is made for use only in the manufacture of such new drug or new animal drug limited to investigational use as provided in part 312 or § 511.1 or § 516.125 of this chapter; or

(c) A new drug application or new animal drug application or a request for addition to the index covering the use of the drug substance in the production and marketing of a finished drug product has been submitted but not yet approved, disapproved, granted, or denied, the bulk drug is not exported, and the finished drug product is not further distributed after it is manufactured until after the new drug application or new animal drug application is approved or the request for addition to the index is granted.

PART 202—PRESCRIPTION DRUG ADVERTISING

■ 10. The authority citation for 21 CFR part 202 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 360b, 371.

■ 11. Amend § 202.1 by revising paragraph (e)(4)(i)*(a)* to read as follows:

§ 202.1 Prescription-drug advertisements.

* * * * *

(e) * * *

(4) *Substance of information to be included in brief summary.* (i)(*a*) An advertisement for a prescription drug covered by a new-drug application approved pursuant to section 505 of the act after October 10, 1962, or a prescription drug covered by a new animal drug application approved pursuant to section 512 of the act after August 1, 1969, or any approved supplement thereto, or for a prescription drug listed in the index pursuant to section 572 of the act, or any granted modification thereto, shall not recommend or suggest any use that is not in the labeling accepted in such approved new-drug application or supplement, new animal drug application or supplement, or new animal drug index listing or modification. The advertisement shall present information from labeling

required, approved, permitted, or granted in a new-drug or new animal drug application or new animal drug index listing relating to each specific side effect and contraindication in such labeling that relates to the uses of the advertised drug dosage form(s) or shall otherwise conform to the provisions of paragraph (e)(3)(iii) of this section.

* * * * *

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

■ 12. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360b, 371, 374, 381, 393; 42 U.S.C. 262, 264, 271.

■ 13. Amend § 207.20 by revising paragraph (c) to read as follows:

§ 207.20 Who must register and submit a drug list.

* * * * *

(c) Before beginning manufacture or processing of a drug subject to one of the following applications, an owner or operator of an establishment is required to register before the agency approves or grants it: A new drug application, an abbreviated new drug application, a new animal drug application, an abbreviated new animal drug application, a medicated feed mill license application, a biologics license application, or a request for addition to the index.

* * * * *

■ 14. Amend § 207.21 by revising the second sentence in paragraph (a) to read as follows:

§ 207.21 Times for registration and drug listing.

(a) * * * If the owner or operator of the establishment has not previously entered into such an operation, the owner or operator shall register within 5 days after submitting a new drug application, abbreviated new drug application, new animal drug application, abbreviated new animal drug application, request for addition to the index, medicated feed mill license application, or a biologics license application. * * *

* * * * *

■ 15. Amend § 207.35 by revising paragraph (b)(3)(v) to read as follows:

§ 207.35 Notification of registrant; drug establishment registration number and drug listing number.

* * * * *

(b) * * *

(3) * * *

(v) The placing of the assigned NDC number on a label or in other labeling does not require the submission of a supplemental new drug application, supplemental new animal drug application, or a modification to an index listing.

* * * * *

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

■ 16. The authority citation for 21 CFR part 225 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

■ 17. Amend § 225.1 by revising paragraph (c) to read as follows:

§ 225.1 Current good manufacturing practice.

* * * * *

(c) In addition to the recordkeeping requirements in this part, Type B and Type C medicated feeds made from Type A articles or Type B feeds under approved NADAs or indexed listings and a medicated feed mill license are subject to the requirements of § 510.301 of this chapter.

■ 18. Amend § 225.35 by revising paragraph (b) to read as follows:

§ 225.35 Use of work areas, equipment, and storage areas for other manufacturing and storage purpose.

* * * * *

(b) Work areas and equipment used for the manufacture or storage of medicated feeds or components thereof shall not be used for, and shall be physically separated from, work areas and equipment used for the manufacture of fertilizers, herbicides, insecticides, fungicides, rodenticides, and other pesticides unless such articles are approved drugs, indexed drugs, or approved food additives intended for use in the manufacture of medicated feed.

■ 19. Revise § 225.135 to read as follows:

§ 225.135 Work and storage areas.

Work areas and equipment used for the production or storage of medicated feeds or components thereof shall not be used for, and shall be physically separated from, work areas and equipment used for the manufacture and storage of fertilizers, herbicides, insecticides, fungicides, rodenticides, and other pesticides unless such articles are approved or index listed for use in the manufacture of animal feed.

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

■ 20. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

■ 21. Amend § 226.1 by adding a second sentence to paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) * * * Similarly, Type A medicated articles listed in the index are subject to the requirements of § 516.165 of this chapter.

PART 500—GENERAL

■ 22. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

■ 23. Amend § 500.25 by revising paragraph (c) to read as follows:

§ 500.25 Anthelmintic drugs for use in animals.

* * * * *

(c) For drugs covered by approved new animal drug applications, the labeling revisions required for compliance with this section may be placed into effect without prior approval, as provided for in § 514.8(c)(3) of this chapter. For drugs listed in the index, the labeling revisions required for compliance with this section may be placed into effect without prior granting of a request for a modification, as provided for in § 516.161(b)(1) of this chapter.

* * * * *

■ 24. Amend § 500.26 by revising paragraph (b) and the second sentence in paragraph (c) to read as follows:

§ 500.26 Timed-release dosage form drugs.

* * * * *

(b) Timed-release dosage form animal drugs that are introduced into interstate commerce are deemed to be adulterated within the meaning of section 501(a)(5) of the act and subject to regulatory action, unless such animal drug is the subject of an approved new animal drug application, or listed in the index, as required by paragraph (a) of this section.

(c) * * * A new animal drug application or index listing is required in any such case.

* * * * *

PART 510—NEW ANIMAL DRUGS

■ 25. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 26. Amend § 510.301 by revising the introductory text, paragraph (a)(2), and the second sentence in paragraph (b)(1) to read as follows:

§ 510.301 Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved medicated feed mill license application is in effect.

Records and reports of clinical and other experience with the new animal drug will be maintained and reported, appropriately identified with the new animal drug application(s) or index listing(s) to which they relate, to the Center for Veterinary Medicine in duplicate in accordance with the following:

(a) * * *

(2) Information concerning any bacteriological or any significant chemical, physical, or other change or deterioration in the drug, or any failure of one or more distributed batches of the drug to meet the specifications established for it in the new animal drug application or request for determination of eligibility for indexing.

(b) * * *

(1) * * * *Unexpected* as used in this paragraph refers to conditions or developments not previously submitted as part of the new animal drug application or in support of the index listing or not encountered during clinical trials of the drug, or conditions or developments occurring at a rate higher than shown by information previously submitted as part of the new animal drug application or in support of the index listing or at a rate higher than encountered during such clinical trials.

* * * * *

■ 27. Amend § 510.305 by revising paragraph (b) to read as follows:

§ 510.305 Maintenance of copies of approved medicated feed mill licenses to manufacture animal feed bearing or containing new animal drugs.

* * * * *

(b) Approved or index listed labeling for each Type B and/or Type C feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated.

■ 28. Amend § 510.455 by revising paragraphs (b) and (c) to read as follows:

§ 510.455 Requirements for free-choice medicated feeds.

* * * * *

(b) *What is required for new animal drugs intended for use in free-choice feed*? Any new animal drug intended for use in free-choice feed must be approved for such use under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(b)) or listed in the index under section 572 of the act (21 U.S.C. 360ccc–1). Such approvals under section 512 of the act must be:

(1) An original new animal drug application (NADA),

(2) A supplemental NADA, or

(3) An abbreviated NADA.

(c) *What are the approval requirements under section 512 of the act for new animal drugs intended for use in free-choice feed*? An approval under section 512 of the act for a Type A medicated article intended for use in free-choice feed must contain the following information:

(1) Data, or reference to data in a master file (MF), showing that the target animal consumes the new animal drug in the Type C free-choice feed in an amount that is safe and effective (consumption/effectiveness data); and

(2) Data, or reference to data in an MF, showing the relevant ranges of conditions under which the drug will be chemically and physically stable in the Type C free-choice feed under field conditions.

* * * * *

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

■ 29. The authority citation for 21 CFR part 511 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 360b, 371.

■ 30. Amend § 511.1 by adding paragraph (g) to read as follows:

§ 511.1 New animal drugs for investigational use exempt from section 512(a) of the act.

* * * * *

(g) *Index of legally marketed unapproved new animal drugs for minor species.* All provisions of part 511 apply to new animal drugs for investigational use in support of indexing, as described in section 572 of the act, subject to the provisions of § 516.125 of this chapter.

PART 515—MEDICATED FEED MILL LICENSE

■ 31. The authority citation for 21 CFR part 515 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 32. Amend § 515.10 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 515.10 Medicated feed mill license applications.

* * * * *

(b) * * *

(4) A certification that the animal feeds bearing or containing new animal drugs are manufactured and labeled in accordance with the applicable regulations published under section 512(i) of the act or in accordance with the index listing published under section 572(e)(2) of the act.

* * * * *

(7) A commitment that current approved or index listed Type B and/or Type C medicated feed labeling for each Type B and/or Type C medicated feed to be manufactured will be in the possession of the feed manufacturing facility prior to receiving the Type A medicated article containing such drug.

* * * * *

■ 33. Amend § 515.21 by revising paragraph (a)(3) to read as follows:

§ 515.21 Refusal to approve a medicated feed mill license application.

(a) * * *

(3) The facility manufactures animal feeds bearing or containing new animal drugs in a manner that does not accord with the specifications for manufacture or labels animal feeds bearing or containing new animal drugs in a manner that does not accord with the conditions or indications of use that are published under section 512(i) or 572(e)(2) of the act.

* * * * *

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 34. The authority citation for part 516 is revised to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 35. Part 516 is amended by adding subpart C, consisting of §§ 516.111 to 516.171, to read as follows:

Subpart C—Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

Sec.

Subpart C—Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

§ 516.111 Scope of this subpart.

This subpart implements section 572 of the act and provides standards and procedures to establish an index of legally marketed unapproved new animal drugs. This subpart applies only to minor species and not to minor use in major species. This index is only available for new animal drugs intended for use in a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food-producing animals and for new animal drugs intended for use only in a hatchery, tank, pond, or other similar contained man-made structure in an early, nonfood life stage of a food-producing minor species, where safety for humans is demonstrated in accordance with the standard of section 512(d) of the act (including, for an antimicrobial new animal drug, with respect to antimicrobial resistance). The index shall not include a new animal drug that is contained in, or a product of, a transgenic animal. Among its topics, this subpart sets forth the standards and procedures for:

(a) Investigational exemptions for indexing purposes;

(b) Submissions to FDA of requests for determination of eligibility of a new animal drug for indexing;

(c) Establishment and operation of expert panels;

(d) Submissions to FDA of requests for addition of a new animal drug to the index;

(e) Modifications to index listings;

(f) Publication of the index; and

(g) Records and reports.

§ 516.115 Definitions.

(a) The following definitions of terms apply only in the context of subpart C of this part:

Director OMUMS means the Director of the Office of Minor Use and Minor Species Animal Drug Development of the FDA Center for Veterinary Medicine.

Holder means the requestor of an index listing after the request is granted and the new animal drug is added to the index.

Index means FDA's list of legally marketed unapproved new animal drugs for minor species.

Intended use has the same meaning as that given in § 516.13 of this chapter.

Qualified expert panel means a panel that is composed of experts qualified by scientific training and experience to evaluate the target animal safety and effectiveness of a new animal drug under consideration for indexing.

Requestor means the person making a request for determination of eligibility for indexing or a request for addition to the index.

Transgenic animal means an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal, provided that the term 'transgenic animal' does not include an animal of which the nucleotide sequence of the genome has been modified solely by selective breeding.

(b) The definitions of the following terms are given in § 514.3 of this chapter:

Adverse drug experience.

Product defect/manufacturing defect.

Serious adverse drug experience.

Unexpected adverse drug experience.

(c) The definitions of the following terms are given in § 516.3 of this chapter:

Same dosage form.

Same drug.

Same intended use.

§ 516.117 Submission of correspondence under this subpart.

Unless directed otherwise by FDA, all correspondence relating to any aspect of the new animal drug indexing process described in this subpart must be addressed to the Director, OMUMS. The initial correspondence for a particular index listing should include the name and address of the authorized contact person. Notifications of changes in such person or changes of address of such person should be provided in a timely manner.

§ 516.119 Permanent-resident U.S. agent for foreign requestors and holders.

Every foreign requestor and holder shall name a permanent resident of the United States as their agent upon whom service of all processes, notices, orders, decisions, requirements, and other communications may be made on behalf of the requestor or holder. Notifications of changes in such agents or changes of address of agents should preferably be provided in advance, but not later than 60 days after the effective date of such changes. The permanent resident U.S. agent may be an individual, firm, or domestic corporation and may represent any number of requestors or holders. The name and address of the permanent-resident U.S. agent shall be submitted to the Director, OMUMS, and included in the index file.

§ 516.121 Meetings.

(a) A requestor or potential requestor is entitled to one or more meetings to discuss the requirements for indexing a new animal drug.

(b) Requests for such meetings should be in writing, be addressed to the Director, OMUMS, specify the participants attending on behalf of the requestor or potential requestor, and contain a proposed agenda for the meeting.

(c) Within 30 days of receiving a request for a meeting, FDA will attempt to schedule the meeting at a time agreeable to both FDA and the person making the request.

§ 516.123 Informal conferences regarding agency administrative actions.

(a) Should FDA make an initial decision denying a request for determination of eligibility for indexing, terminating an investigational exemption, determining that a qualified expert panel does not meet the selection criteria, denying a request for addition to the index, or removing a new animal drug from the index, FDA will give written notice that specifies the grounds for the initial decision and provides an opportunity for an informal conference for review of the decision.

(b) The written notice will include information for scheduling the informal conference and state that a written request for a conference must be made within 60 days of the date FDA sends its notice.

(c) Within 45 days of receiving a request for an informal conference, FDA will schedule and hold the informal conference at a time agreeable to both FDA and the person making the request.

(d) Such an informal conference will be conducted by a presiding officer who will be the Director of the Center for

Veterinary Medicine or his or her designee, excluding the Director of the Office of Minor Use and Minor Species Animal Drug Development and other persons significantly involved in the initial decision.

(e) The person requesting an informal conference must provide a written response to FDA's initial decision at least 2 weeks prior to the date of the scheduled meeting. Generally, this written response would be attached to the request for an informal conference. At the option of the person requesting an informal conference, such written response to FDA's initial decision may act in lieu of a face-to-face meeting. In this case, the informal conference will consist of a review by the presiding officer of the submitted written response.

(f) The purpose of an informal conference is to discuss scientific and factual issues. It will involve a discussion of FDA's initial decision and any written response to that decision.

(g) Internal agency review of a decision must be based on the information in the administrative file. If the person requesting an informal conference presents new information not in the file, the matter will be returned to the appropriate lower level in the agency for reevaluation based on the new information.

(h) Informal conferences under this part are not subject to the separation of functions rules in § 10.55 of this chapter.

(i) The rules of evidence do not apply to informal conferences. No motions or objections relating to the admissibility of information and views will be made or considered, but any party to the conference may comment upon or rebut all such data, information and views.

(j) [Reserved]

(k) The presiding officer will prepare a written report regarding the subject of the informal conference that states and describes the basis for his or her findings. Whenever time permits, the parties to the informal conference will have 30 days to review and comment on the report.

(l) The administrative record of the informal conference will consist of:

(1) The notice providing an opportunity for an informal conference and the written response to the notice.

(2) All written information and views submitted to the presiding officer at the conference or, at the discretion of the presiding officer, thereafter.

(3) The presiding officer's written report.

(4) All correspondence and memoranda of any and all meetings between the participants and the presiding officer.

(m) The administrative record of the informal conference is closed to the submission of information at the close of the conference, unless the presiding officer specifically permits additional time for further submission.

(n) The administrative record of the informal conference specified herein constitutes the exclusive record for decision.

§ 516.125 Investigational use of minor species new animal drugs to support indexing.

(a) The investigational use of a new animal drug or animal feed bearing or containing a new animal drug intended solely for investigational use in minor species shall meet the requirements of part 511 of this chapter if the investigational use is for the purpose of:

(1) Demonstrating human food safety under section 572(a)(1)(B) of the act;

(2) Demonstrating safety with respect to individuals exposed to the new animal drug through its manufacture and use under section 572(c)(1)(F) of the act;

(3) Conducting an environmental assessment under section 572(c)(1)(E) of the act; or

(4) Obtaining approval of a new animal drug application or abbreviated new animal drug application under section 512(b) of the act.

(b) Correspondence and information associated with investigations described in paragraph (a) of this section shall not be sent to the Director, OMUMS, but shall be submitted to FDA in accordance with the provisions of part 511 of this chapter.

(c) The investigational use of a new animal drug or animal feed bearing or containing a new animal drug intended solely for investigational use in minor species, other than for an investigational use described in paragraph (a) of this section, shall meet the requirements of this section. For such investigations, all provisions of part 511 of this chapter apply with the following modifications:

(1) Under § 511.1(a)(1) of this chapter, the label statement is as follows:

''*Caution.* Contains a new animal drug for investigational use only in laboratory animals or for tests in vitro in support of index listing. Not for use in humans.''

(2) Under § 511.1(b)(1) of this chapter, the label statement is as follows:

''*Caution.* Contains a new animal drug for use only in investigational animals in clinical trials in support of index listing. Not for use in humans. Edible products of investigational animals are not to be used for food for humans or other animals unless authorization has been granted by the U.S. Food and Drug Administration or by the U.S. Department of Agriculture.''

(3) Under § 511.1(b)(4) of this chapter, the notice is titled ''Notice of Claimed Investigational Exemption for a New Animal Drug for Index Listing'' and is submitted in duplicate to the Director, OMUMS.

(4) Under § 511.1(c)(3) of this chapter, if an investigator is determined to be ineligible to receive new animal drugs, each ''Notice of Claimed Investigational Exemption for a New Animal Drug for Index Listing'' and each request for indexing shall be examined with respect to the reliability of information submitted by the investigator.

(5) Under § 511.1(c)(4) and (d)(2) of this chapter, with respect to termination of exemptions, the sponsor of an investigation shall not be granted an opportunity for a regulatory hearing before FDA pursuant to part 16 of this chapter. Instead, the sponsor shall have an opportunity for an informal conference as described in § 516.123.

(6) Under § 511.1(c)(5) of this chapter, if the Commissioner of Food and Drugs determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the data remaining are such that a request for addition to the index would have been denied, FDA will remove the new animal drug from the index in accordance with § 516.167.

(d) The investigational use of a new animal drug or animal feed bearing or containing a new animal drug subject to paragraph (c) of this section shall not be subject to the good laboratory practice requirements in part 58 of this chapter.

(e) Correspondence and information associated with investigations described in paragraph (c) of this section shall be sent to the Director, OMUMS, in accordance with the provisions of this section.

§ 516.129 Content and format of a request for determination of eligibility for indexing.

(a) Each request for determination of eligibility:

(1) May involve only one drug (or one combination of drugs) in one dosage form;

(2) May not involve a new animal drug that is contained in or a product of a transgenic animal;

(3) May not involve the same drug in the same dosage form for the same intended use as a drug that is already approved or conditionally approved; and

(4) Must be submitted separately.

(b) A request for determination of eligibility for indexing may involve multiple intended uses and/or multiple

minor species. However, if a request for determination of eligibility for indexing that contains multiple intended uses and/or multiple minor species cannot be granted in any part, the entire request will be denied.

(c) A requestor must submit two copies of a dated request signed by the authorized contact person for determination of eligibility for indexing that contains the following:

(1) Identification of the minor species or groups of minor species for which the new animal drug is intended;

(2) Information regarding drug components and composition;

(3) A statement of the intended use(s) of the new animal drug in the identified minor species or groups of minor species;

(4) A statement of the proposed conditions of use associated with the stated intended use(s) of the new animal drug, including the proposed dosage, route of administration, contraindications, warnings, and any other significant limitations associated with the intended use(s) of the new animal drug;

(5) A brief discussion of the need for the new animal drug for the intended use(s);

(6) An estimate of the anticipated annual distribution of the new animal drug, in terms of the total quantity of active ingredient, after indexing;

(7) Information to establish that the new animal drug is intended for use:

(i) In a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food-producing animals; or

(ii) In a hatchery, tank, pond, or other similar contained man-made structure in (which includes on) an early, non-food life stage of a food-producing minor species, and information to demonstrate food safety in accordance with the standards of section 512(d) of the act and § 514.111 of this chapter (including, for an antimicrobial new animal drug, with respect to antimicrobial resistance);

(8) A description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of the new animal drug sufficient to demonstrate that the requestor has established appropriate specifications for the manufacture and control of the new animal drug and that the requestor has an understanding of current good manufacturing practices;

(9) Either a claim for categorical exclusion under § 25.30 or § 25.33 of this chapter or an environmental assessment under § 25.40 of this chapter;

(10) Information sufficient to support the conclusion that the new animal drug is safe under section 512(d) of the act with respect to individuals exposed to the new animal drug through its manufacture and use; and

(11) The name and address of the contact person or permanent-resident U.S. agent.

§ 516.131 Refuse to file a request for determination of eligibility for indexing.

(a) If a request for determination of eligibility for indexing contains all of the information required by § 516.129, FDA shall file it, and the filing date shall be the date FDA receives the request.

(b) If a request for a determination of eligibility lacks any of the information required by § 516.129, FDA will not file it, but will inform the requestor in writing within 30 days of receiving the request as to what information is lacking.

§ 516.133 Denying a request for determination of eligibility for indexing.

(a) FDA will deny a request for determination of eligibility for indexing if it determines upon the basis of the request evaluated together with any other information before it with respect to the new animal drug that:

(1) The same drug in the same dosage form for the same intended use is already approved or conditionally approved;

(2) There is insufficient information to demonstrate that the new animal drug is intended for use:

(i) In a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food-producing animals, or

(ii) In a hatchery, tank, pond, or other similar contained man-made structure in (which includes on) an early, non-food life stage of a food-producing minor species, and there is insufficient evidence to demonstrate safety for humans in accordance with the standard of section 512(d) of the act and § 514.111 of this chapter (including, for an antimicrobial new animal drug, with respect to antimicrobial resistance);

(3) The new animal drug is contained in or is a product of a transgenic animal;

(4) There is insufficient information to demonstrate that the requestor has established appropriate specifications for the manufacture and control of the new animal drug and that the requestor has an understanding of current good manufacturing practices;

(5) The requester fails to submit an adequate environmental assessment under § 25.40 of this chapter or fails to provide sufficient information to establish that the requested action is subject to categorical exclusion under § 25.30 or § 25.33 of this chapter;

(6) There is insufficient information to determine that the new animal drug is safe with respect to individuals exposed to the new animal drug through its manufacture or use; or

(7) The request for determination of eligibility for indexing fails to contain any other information required under the provisions of § 516.129.

(b) FDA may deny a request for determination of eligibility for indexing if it contains any untrue statement of a material fact or omits material information.

(c) When a request for determination of eligibility for indexing is denied, FDA will notify the requestor in accordance with § 516.137.

§ 516.135 Granting a request for determination of eligibility for indexing.

(a) FDA will grant the request for determination of eligibility for indexing if none of the reasons described in § 516.133 for denying such a request applies.

(b) When a request for determination of eligibility for indexing is granted, FDA will notify the requestor in accordance with § 516.137.

§ 516.137 Notification of decision regarding eligibility for indexing.

(a) Within 90 days after the filing of a request for a determination of eligibility for indexing based on § 516.129(c)(7)(i), or 180 days for a request based on § 516.129(c)(7)(ii), FDA shall grant or deny the request, and notify the requestor of FDA's decision in writing.

(b) If FDA denies the request, FDA shall provide due notice and an opportunity for an informal conference as described in § 516.123 regarding its decision. A decision of FDA to deny a request for determination of eligibility for indexing following an informal conference shall constitute final agency action subject to judicial review.

§ 516.141 Qualified expert panels.

(a) *Establishment of a qualified expert panel.* Establishing a qualified expert panel is the first step in the process of requesting the addition of a new animal drug to the index. A qualified expert panel may not be established until FDA has determined that the new animal drug is eligible for indexing. The requestor must choose members for the qualified expert panel in accordance with selection criteria listed in paragraph (b) of this section and submit information about these proposed

members to FDA. FDA must determine whether the proposed qualified expert panel meets the selection criteria prior to the panel beginning its work. Qualified expert panels operate external to FDA and are not subject to the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

(b) *Criteria for the selection of a qualified expert panel.* (1) A qualified expert panel member must be an expert qualified by training and experience to evaluate a significant aspect of target animal safety or effectiveness of the new animal drug under consideration.

(2) A qualified expert panel member must certify that he or she has a working knowledge of section 572 of the act (the indexing provisions of the statute) and this subpart, and that he or she has also read and understood a clear written statement provided by the requestor stating his or her duties and responsibilities with respect to reviewing the new animal drug proposed for addition to the index.

(3) A qualified expert panel member may not be an FDA employee.

(4) A qualified expert panel must have at least three members.

(5) A qualified expert panel must have members with a range of expertise such that the panel, as a whole, is qualified by training and experience to evaluate the target animal safety and effectiveness of the new animal drug under consideration.

(6) Unless FDA makes a determination to allow participation notwithstanding an otherwise disqualifying financial interest, a qualified expert panel member must not have a conflict of interest or the appearance of a conflict of interest, as described in paragraph (g) of this section.

(c) *Requestor responsibilities.* (1) The requestor must:

(i) Choose members for the qualified expert panel in accordance with selection criteria listed in paragraph (b) of this section.

(ii) Provide each potential expert panel member a copy of section 572 of the act (the indexing provisions of the statute) and this subpart and obtain certification that he or she has a working knowledge of the information.

(iii) Provide each potential expert panel member a written statement describing the purpose and scope of his or her participation on the qualified expert panel and obtain certification that he or she has read and understood the information. The written statement should describe the duties and responsibilities of qualified expert panels and their members established by paragraphs (e) and (f) of this section, including the need to prepare a written report under § 516.143.

(iv) Obtain information from each potential expert panel member demonstrating that he or she is qualified by training and experience to evaluate the target animal safety and effectiveness of the new animal drug under consideration. This information can be obtained from a comprehensive curriculum vitae or similar document.

(v) Notify each potential expert panel member that he or she must submit information relating to potential conflict of interest directly to FDA in a timely manner, as required in paragraph (e)(6) of this section.

(2) The requestor must submit, in writing, the names and addresses of the proposed qualified expert panel members and sufficient information about each proposed member for FDA to determine whether the panel meets the selection criteria listed in paragraphs (b)(1) through (b)(5) of this section.

(3) After FDA has determined that the qualified expert panel meets the selection criteria, the requestor must provide to the panel all information known by the requestor that is relevant to a determination of the target animal safety and the effectiveness of the new animal drug at issue. In addition, the requestor must notify FDA of the name of the qualified expert panel leader.

(4) The requestor must immediately notify FDA if it believes a qualified expert panel member no longer meets the selection criteria listed in paragraph (b) of this section or is otherwise not in compliance with the requirements of this section.

(5) If a qualified expert panel member cannot complete the review for which he or she was selected, the requestor must either choose a replacement or justify the continued work of the panel in the absence of the lost panelist. In either case, the requestor must submit sufficient information for FDA to determine whether the proposed revised qualified expert panel meets the selection criteria listed in paragraphs (b)(1) through (b)(5) of this section.

(6) The requestor must keep copies of all information provided to, or received from, qualified expert panel members, including the written report, for 2 years after the completion of the report, or the product is added to the index, whichever occurs later, and make them available to a duly authorized employee of the agency at all reasonable times.

(d) *FDA responsibilities.* (1) FDA will determine whether the requestor's proposed qualified expert panel meets the selection criteria listed in paragraph (b) of this section. FDA will expeditiously inform the requestor, in writing, of its determination. If FDA determines that the qualified expert panel does not meet the selection criteria, FDA will provide due notice and an opportunity for an informal conference as described in § 516.123. A determination by FDA that a proposed qualified expert panel does not meet the selection criteria following an informal conference shall constitute final agency action subject to judicial review.

(2) If FDA determines that a qualified expert panel no longer meets the selection criteria listed in paragraph (b) of this section or that the panel or its members are not in compliance with the requirements of this section, the agency will expeditiously inform the requestor, in writing, of this determination and provide due notice and an opportunity for an informal conference as described in § 516.123. A determination by FDA, following an informal conference, that a qualified expert panel no longer meets the selection criteria listed in paragraph (b) of this section or that the panel or its members are not in compliance with the requirements of this section shall constitute final agency action subject to judicial review.

(e) *Responsibilities of a qualified expert panel member.* A qualified expert panel member must do the following:

(1) Continue to meet all selection criteria described in paragraph (b) of this section.

(2) Act in accordance with generally accepted professional and ethical business practices.

(3) Review all information relevant to a determination of the target animal safety and effectiveness of the new animal drug provided by the requestor. The panel should also consider all relevant information otherwise known by the panel members, including anecdotal information.

(4) Participate in the preparation of the written report of the findings of the qualified expert panel, described in § 516.143.

(5) Sign, or otherwise approve in writing, the written report. Such signature or other written approval will serve as certification that the written report meets the requirements of the written report in § 516.143.

(6) Provide the information relating to potential conflict of interest described in paragraph (g) of this section to FDA for its consideration. Such information should be submitted directly to the Director, OMUMS, when notified by the requestor.

(7) Immediately notify the requestor and FDA of any change in conflict of interest status.

(8) Certify at the time of submission of the written report that there has been

no change in conflict of interest status, or identify and document to FDA any such change.

(f) *Additional responsibilities of a qualified expert panel leader.* (1) The qualified expert panel leader must ensure that the activities of the panel are performed efficiently and in accordance with generally accepted professional and ethical business practices.

(2) The qualified expert panel leader serves as the principal point of contact between representatives of the agency and the panel.

(3) The qualified expert panel leader is responsible for submitting the written report and all notes or minutes relating to panel deliberations to the requestor.

(4) The qualified expert panel leader must maintain a copy of the written report and all notes or minutes relating to panel deliberations that are submitted to the requestor for 2 years after the report is submitted. Such records must be made available to a duly authorized employee of the agency for inspection at all reasonable times.

(g) *Prevention of conflicts of interest.* (1) For the purposes of this subpart, FDA will consider a conflict of interest to be any financial or other interest that could impair a person's objectivity in serving on the qualified expert panel or could create an unfair competitive advantage for a person or organization.

(2) Factors relevant to whether there is a conflict of interest or the appearance of a conflict of interest include whether the qualified expert panel member, their spouse, their minor children, their general partners, or any organizations in which they serve as an officer, director, trustee, general partner or employee:

(i) Is currently receiving or seeking funding from the requestor through a contract or research grant (either directly or indirectly through another entity, such as a university).

(ii) Has any employment, contractual, or other financial arrangement with the requestor other than receiving a reasonable fee for serving as a member of the qualified expert panel.

(iii) Has any ownership or financial interest in any drug, drug manufacturer, or drug distributor which will benefit from either a favorable or unfavorable evaluation or opinion.

(iv) Has any ownership or financial interest in the new animal drug being reviewed by the qualified expert panel.

(v) Has participated in the design, manufacture, or distribution of any drug that will benefit from either a favorable or unfavorable opinion of the qualified expert panel.

(vi) Has provided within 1 year any consultative services regarding the new animal drug being reviewed by the qualified expert panel.

(vii) Has entered into an agreement in which fees charged or accepted are contingent upon the panel member making a favorable evaluation or opinion.

(viii) Receives payment for services related to preparing information the requestor presents to the qualified expert panel, other than for services related to the written report described in § 516.143.

(3) To permit FDA to make a decision regarding potential conflict of interest, a potential qualified expert panel member must submit to the Director, OMUMS, the following information relating to themselves, their spouse, their minor children, their general partners, or any organizations in which they serve as an officer, director, trustee, general partner or employee, regarding the following issues to the extent that they are, in any way, relevant to the subject of the review of the qualified expert panel:

(i) Investments (for example, stocks, bonds, retirement plans, trusts, partnerships, sector funds, etc.), including for each the following: Name of the firm, type of investment, owner (self, spouse, etc.), number of shares / current value.

(ii) Employment (full or part time, current or under negotiation), including for each the following: Name of the firm, relationship (self, spouse, etc.), position in firm, date employment or negotiation began.

(iii) Consultant/advisor (current or under negotiation), including for each the following: Name of the firm, topic/issue, amount received, date initiated.

(iv) Contracts, grants, Cooperation Research and Development Agreement (CRADAs) (current or under negotiation), including for each the following: Type of agreement, product under study and indications, amount of remuneration (institution/self), time period, sponsor (government, firm, institution, individual), role of the person (site investigator, principal investigator, co-investigator, partner, no involvement, other), awardee.

(v) Patents/royalties/trademarks, including for each the following: Description, name of firm involved, income received.

(vi) Expert witness (last 12 months or under negotiation), including for each the following: For or against, name of firm, issue, amount received.

(vii) Speaking/writing (last 12 months or under negotiation), including for each the following: Firm, topic/issue, amount received (honorarium/travel), date.

(viii) Whether the potential qualified expert panel member, their spouse, their minor children, their general partners or any organizations in which they serve as an officer, director, trustee, general partner or employee, have had, at any time in the past, involvement of the kind noted in paragraph (g)(3)(i) through (g)(3)(vii) of this section with respect to the animal drug that is the subject of the qualified expert panel review.

(ix) Whether there are any other involvements (other kinds of relationships) that would give the appearance of a conflict of interest which have not been described in paragraph (g)(3)(i) through (g)(3)(viii) of this section.

(x) In all cases, a response of ''no,'' ''none,'' or ''not applicable'' is satisfactory when there is no relevant information to submit.

(xi) A certification statement signed by the potential qualified expert panel member to the effect that all information submitted is true and complete to the best of their knowledge, that they have read and understood their obligations as an expert panel member, and that they will notify FDA and the requestor of any change in their conflict of interest status.

(4) The fact that a qualified expert panel member receives a reasonable fee for services as a member of the qualified expert panel, provided that the fee is no more than commensurate with the value of the time that the member devotes to the review process, does not constitute a conflict of interest or the appearance of a conflict of interest.

§ 516.143 Written report.

The written report required in § 516.145(b)(3) shall:

(a) Be written in English by a qualified expert panel meeting the requirements of § 516.141;

(b) Describe the panel's evaluation of all available target animal safety and effectiveness information relevant to the proposed use of the new animal drug, including anecdotal information;

(c) For all information considered, including anecdotal information, include either a citation to published literature or a summary of the information;

(d) State the panel's opinion regarding whether the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm being caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question;

(e) Be signed, or otherwise approved in writing, by all panel members, in accordance with § 516.141; and

(f) If the panel unanimously concludes that the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm being caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question, the written report shall:

(1) Provide draft labeling that includes all conditions of use and limitations of use of the new animal drug deemed necessary by the panel to assure that the benefits of use of the new animal drug outweigh the risks, or provide narrative information from which such labeling can be written by the requestor; and

(2) Include a recommendation regarding whether the new animal drug should be limited to use under the professional supervision of a licensed veterinarian.

§ 516.145 Content and format of a request for addition to the index.

(a) A requestor may request addition of a new animal drug to the index only after the new animal drug has been granted eligibility for indexing.

(b) A requestor shall submit two copies of a dated request signed by the authorized contact for addition of a new animal drug to the index that contains the following:

(1) A copy of FDA's determination of eligibility issued under § 516.137;

(2) A copy of FDA's written determination that the proposed qualified expert panel meets the selection criteria provided for in § 516.141(b);

(3) A written report that meets the requirements of § 516.143;

(4) A proposed index entry that contains the information described in § 516.157;

(5) Proposed labeling, including representative labeling proposed to be used for Type B and Type C medicated feeds if the drug is intended for use in the manufacture of medicated feeds;

(6) Anticipated annual distribution of the new animal drug, in terms of the total quantity of active ingredient, after indexing;

(7) A written commitment to manufacture the new animal drug and animal feeds bearing or containing such new animal drug according to current good manufacturing practices;

(8) A written commitment to label, distribute, and promote the new animal drug only in accordance with the index entry;

(9) The name and address of the contact person or permanent-resident U.S. agent; and

(10) A draft Freedom of Information summary which includes the following information:

(i) A general information section that contains the name and address of the requestor and a description of the drug, route of administration, indications, and recommended dosage.

(ii) A list of the names and affiliations of the members of the qualified expert panel, not including their addresses or other contact information.

(iii) A summary of the findings of the qualified expert panel concerning the target animal safety and effectiveness of the drug.

(iv) Citations of all publicly-available literature considered by the qualified expert panel.

(v) For an early life stage of a food-producing minor species animal, a human food safety summary.

(c) Upon specific request by FDA, the requestor shall submit the information described in § 516.141 that it submitted to the qualified expert panel. Any such information not in English should be accompanied by an English translation.

§ 516.147 Refuse to file a request for addition to the index.

(a) If a request for addition to the index contains all of the information required by § 516.145(b), FDA shall file it, and the filing date shall be the date FDA receives the request.

(b) If a request for addition to the index lacks any of the information required by § 516.145, FDA will not file it, but will inform the requestor in writing within 30 days of receiving the request as to what information is lacking.

§ 516.149 Denying a request for addition to the index.

(a) FDA will deny a request for addition to the index if it finds the following:

(1) The same drug in the same dosage form for the same intended use is already approved or conditionally approved;

(2) On the basis of new information, the new animal drug no longer meets the conditions for eligibility for indexing;

(3) The request for indexing fails to contain information required under the provisions of § 516.145;

(4) The qualified expert panel fails to meet any of the selection criteria listed in § 516.141(b);

(5) The written report of the qualified expert panel and other information available to FDA is insufficient to permit FDA to determine that the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question;

(6) On the basis of the report of the qualified expert panel and other information available to FDA, the benefits of using the new animal drug for the proposed use in a minor species do not outweigh its risks to the target animal, taking into account the harm caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question; or

(7) The request contains any untrue statement of a material fact or omits material information.

(b) When a request for addition to the index is denied, FDA will notify the requestor in accordance with § 516.153.

§ 516.151 Granting a request for addition to the index.

(a) FDA will grant the request for addition of a new animal drug to the index if none of the reasons described in § 516.149 for denying such a request applies.

(b) When a request for addition of a new animal drug to the index is granted, FDA will notify the requestor in accordance with § 516.153.

§ 516.153 Notification of decision regarding index listing.

(a) Within 180 days after the filing of a request for addition of a new animal drug to the index, FDA shall grant or deny the request and notify the requestor of FDA's decision in writing.

(b) If FDA denies the request for addition of a new animal drug to the index, FDA shall provide due notice and an opportunity for an informal conference as described in § 516.123. A decision of FDA to deny a request to index a new animal drug following an informal conference shall constitute final agency action subject to judicial review.

§ 516.155 Labeling of indexed drugs.

(a) The labeling of an indexed drug that is found to be eligible for indexing under § 516.129(c)(7)(i) shall state, prominently and conspicuously: *''NOT APPROVED BY FDA.—Legally marketed as an FDA indexed product. Extra-label use is prohibited.'' ''This product is not to be used in animals intended for use as food for humans or other animals.''*

(b) The labeling of an indexed drug that was found to be eligible for indexing for use in an early, non-food life stage of a food-producing minor species animal, under § 516.129(c)(7)(ii), shall state, prominently and

conspicuously: *''NOT APPROVED BY FDA.—Legally marketed as an FDA indexed product. Extra-label use is prohibited.''*

(c) The labeling of an indexed drug shall contain such other information as may be prescribed in the index listing.

§ 516.157 Publication of the index and content of an index listing.

(a) FDA will make the list of indexed drugs available through the FDA Web site. A printed copy can be obtained by writing to the FDA Freedom of Information Staff or by visiting the FDA Freedom of Information Public Reading Room.

(b) The list will contain the following information for each indexed drug:

(1) The name and address of the person who holds the index listing;

(2) The name of the drug and the intended use and conditions of use for which it is indexed;

(3) Product labeling; and

(4) Conditions and any limitations that FDA deems necessary regarding use of the drug.

§ 516.161 Modifications to indexed drugs.

(a) After a drug is listed in the index, certain modifications to the index listing may be requested. Any modification of an index listing may not cause an indexed drug to be a different drug (or different combination of drugs) or a different dosage form. If such modification is requested, FDA will notify the holder that a new index listing is required for the new drug or dosage form.

(b) Modifications to the indexed drug will fall under one of three categories and must be submitted as follows:

(1) *Urgent changes.* (i) The following modifications to an indexed drug or its labeling should be made as soon as possible, and a request to modify the indexed drug should be concurrently submitted:

(A) The addition to package labeling, promotional labeling, or prescription drug advertising of additional warning, contraindication, side effect, or cautionary information.

(B) The deletion from package labeling, promotional labeling, and drug advertising of false, misleading, or unsupported indications for use or claims for effectiveness.

(C) Changes in manufacturing methods or controls required to correct product or manufacturing defects that may result in serious adverse drug events.

(ii) The modifications described in paragraph (b)(1)(i) of this section must be submitted to the Director, OMUMS, in the form of a request for modification of an indexed drug, and must contain sufficient information to permit FDA to determine the need for the modification and whether the modification appropriately addresses the need.

(iii) FDA will take no action against an indexed drug or index holder solely because modifications of the kinds described in paragraph (b)(1)(i) of this section are placed into effect by the holder prior to receipt of a written notice granting the request if all the following conditions are met:

(A) A request to modify the indexed drug providing a full explanation of the basis for the modifications has been submitted, plainly marked on the mailing cover and on the request as follows: ''Special indexing request—modifications being effected;''

(B) The holder specifically informs FDA of the date on which such modifications are to be effected and submits two printed copies of any revised labeling to be placed in use, and

(C) All promotional labeling and all drug advertising are promptly revised consistent with modifications made in the labeling on or within the indexed drug package.

(2) *Significant changes.* (i) The following modifications to an indexed drug or its labeling may be made only after a request has been submitted to and subsequently granted by FDA:

(A) Addition of an intended use.

(B) Addition of a species.

(C) Addition or alteration of an active ingredient.

(D) Alteration of the concentration of an active ingredient.

(E) Alteration of dose or dosage regimen.

(F) Alteration of prescription or over-the-counter status.

(ii) Each modification described in paragraph (b)(2)(i) of this section must go through the same review process as an original index listing and is subject to the same standards for review.

(iii) Each submission of a request for a modification described in paragraph (b)(2)(i) of this section should contain only one type of modification unless one modification is actually necessitated by another, such as a modification of dose necessitated by a modification of the concentration of an active ingredient. Submissions relating to addition of an intended use for an existing species or addition of a species should be submitted separately, but each such submission may include multiple additional intended uses and/or multiple additional species.

(3) *Minor changes.* All modifications other than those described in paragraphs (b)(1) and (b)(2) of this section including, but not limited to, formulation, labeling, and manufacturing methods and controls (at the same level of detail that these were described in the request for determination of eligibility for indexing) must be submitted as part of the annual indexed drug experience report or as otherwise required by § 516.165.

(c) When changes affect the index listing, it will be updated accordingly.

§ 516.163 Change in ownership of an index file.

(a) A holder may transfer ownership of a drug's index file to another person.

(1) The former owner shall submit in writing to FDA a statement that all rights in the index file have been transferred, giving the name and address of the new owner and the date of the transfer. The former owner shall also certify that a complete copy of the following, to the extent that they exist at the time of the transfer of ownership, has been provided to the new owner:

(i) The request for determination of eligibility;

(ii) The request for addition to the index;

(iii) Any modifications to the index listing;

(iv) Any records and reports under § 516.165; and

(v) All correspondence with FDA relevant to the indexed drug and its index listing.

(2) The new owner shall submit the following information in writing to FDA:

(i) The date that the change in ownership is effective;

(ii) A statement that the new owner has a complete copy of all documents listed in paragraph (a)(1) of this section to the extent that they exist at the time of the transfer of ownership;

(iii) A statement that the new owner understands and accepts the responsibilities of a holder of an indexed drug;

(iv) The name and address of a new primary contact person or permanent-resident U.S. agent; and

(v) A list of labeling changes associated with the change of ownership (e.g., a new trade name) as draft labeling, with complete final printed labeling to be submitted in the indexed drug annual report in accordance with §§ 516.161 and 516.165.

(b) Upon receiving the necessary information to support a change of ownership of a drug's index file, FDA will update its publicly-available listing in accordance with § 516.157.

§ 516.165 Records and reports.

(a) *Scope and purpose.* (1) The recordkeeping and reporting

requirements of this section apply to all holders of indexed drugs, including indexed drugs intended for use in medicated feeds.

(2) A holder is not required to report information under this section if the holder has reported the same information under § 514.80 of this chapter.

(3) The records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations in parts 211, 225, and 226 of this chapter.

(4) FDA will review the records and reports required in this section to determine, or facilitate a determination, whether there may be grounds for removing a drug from the index under section 572(f) of the act.

(b) *Recordkeeping requirements.* (1) Each holder of an indexed drug must establish and maintain complete files containing full records of all information pertinent to the safety or effectiveness of the indexed drug. Such records must include information from foreign and domestic sources.

(2) The holder must, upon request from any authorized FDA officer or employee, at all reasonable times, permit such officer or employee to have access to copy and to verify all such records.

(c) *Reporting requirements.* (1) *Three-day indexed drug field alert report.* The holder must inform the appropriate FDA District Office or local FDA resident post of any product or manufacturing defects that may result in serious adverse drug events within 3 working days of first becoming aware that such a defect may exist. The holder may initially provide this information by telephone or other electronic communication means, with prompt written followup. The mailing cover must be plainly marked ''3–Day Indexed Drug Field Alert Report.''

(2) *Fifteen-day indexed drug alert report.* The holder must submit a report on each serious, unexpected adverse drug event, regardless of the source of the information. The holder must submit the report within 15 working days of first receiving the information. The mailing cover must be plainly marked ''15–Day Indexed Drug Alert Report.''

(3) *Annual indexed drug experience report.* The holder must submit this report every year on the anniversary date of the letter granting the request for addition of the new animal drug to the index, or within 60 days thereafter. The report must contain data and information for the full reporting period. Any previously submitted information contained in the report must be identified as such. The holder may ask FDA to change the date of submission and, after approval of such request, file such reports by the new filing date. The report must contain the following:

(i) The number of distributed units of each size, strength, or potency (e.g., 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5-percent solution) distributed during the reporting period. This information must be presented in two categories: Quantities distributed domestically and quantities exported. This information must include any distributor-labeled product.

(ii) If the labeling has changed since the last report, include a summary of those changes and the holder's and distributor's current package labeling, including any package inserts. For large-size package labeling or large shipping cartons, submit a representative copy (e.g., a photocopy of pertinent areas of large feed bags). If the labeling has not changed since the last report, include a statement of such fact.

(iii) A summary of any changes made during the reporting period in the methods used in, and facilities and controls used for, manufacture, processing, and packing. This information must be presented in the same level of detail that it was presented in the request for determination of eligibility for indexing. Do not include changes that have already been submitted under § 516.161.

(iv) Nonclinical laboratory studies and clinical data not previously reported under this section.

(v) Adverse drug experiences not previously reported under this section.

(vi) Any other information pertinent to safety or effectiveness of the indexed drug not previously reported under this section.

(4) *Distributor's statement.* At the time of initial distribution of an indexed drug by a distributor, the holder must submit a report containing the following:

(i) The distributor's current product labeling. This must be identical to that in the index listing except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase such as ''manufactured for'' or ''distributed by.''

(ii) A signed statement by the distributor stating:

(A) The category of the distributor's operations (e.g., wholesale or retail);

(B) That the distributor will distribute the drug only under the indexed drug labeling;

(C) That the distributor will promote the indexed drug only for use under the conditions stated in the index listing; and

(D) If the indexed drug is a prescription new animal drug, that the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products.

(5) *Other reporting.* FDA may by order require that a holder submit information in addition to that required by this section or that the holder submit the same information but at different times or reporting periods.

§ 516.167 Removal from the index.

(a) After due notice to the holder of the index listing and an opportunity for an informal conference as described in § 516.123, FDA shall remove a new animal drug from the index if FDA finds that:

(1) The same drug in the same dosage form for the same intended use has been approved or conditionally approved;

(2) The expert panel failed to meet the requirements in § 516.141;

(3) On the basis of new information before FDA, evaluated together with the evidence available to FDA when the new animal drug was listed in the index, the benefits of using the new animal drug for the indexed use do not outweigh its risks to the target animal, taking into account the harm caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question;

(4) Any of the conditions in § 516.133(a)(2), (5), or (6) are present;

(5) The manufacture of the new animal drug is not in accordance with current good manufacturing practices;

(6) The labeling, distribution, or promotion of the new animal drug is not in accordance with the index listing;

(7) The conditions and limitations of use associated with the index listing have not been followed; or

(8) Any information used to support the request for addition to the index contains any untrue statement of material fact.

(b) The agency may partially remove an indexing listing if, in the opinion of the agency, such partial removal would satisfactorily resolve a safety or effectiveness issue otherwise warranting removal of the listing under section 572(f)(1)(B) of the act.

(c) FDA may immediately suspend a new animal drug from the index if FDA determines that there is a reasonable probability that the use of the drug would present a risk to the health of humans or other animals. The agency will subsequently provide due notice and an opportunity for an informal conference as described in § 516.123.

(d) A decision of FDA to remove a new animal drug from the index

following an informal conference, if any, shall constitute final agency action subject to judicial review.

§ 516.171 Confidentiality of data and information in an index file.

(a) For purposes of this section, the index file includes all data and information submitted to or incorporated by reference into the index file, such as data and information related to investigational use exemptions under § 516.125, requests for determination of eligibility for indexing, requests for addition to the index, modifications to indexed drugs, changes in ownership, reports submitted under § 516.165, and master files. The availability for public disclosure of any record in the index file shall be handled in accordance with the provisions of this section.

(b) The existence of an index file will not be disclosed by FDA before an index listing has been made public by FDA, unless it has previously been publicly disclosed or acknowledged by the requestor.

(c) If the existence of an index file has not been publicly disclosed or acknowledged, no data or information in the index file are available for public disclosure.

(d) If the existence of an index file has been publicly disclosed or acknowledged before an index listing has been made public by FDA, no data or information contained in the file will be available for public disclosure before such index listing is made public, but the agency may, at its discretion, disclose a brief summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After FDA sends a written notice to the requestor granting a request for addition to the index, the following data and information in the index file are available for public disclosure unless extraordinary circumstances are shown:

(1) All safety and effectiveness data and information previously disclosed to the public, as defined in § 20.81 of this chapter.

(2) A summary or summaries of the safety and effectiveness data and information submitted with or incorporated by reference in the index file. Such summaries do not constitute the full information described under section 572(c) and (d) of the act on which the safety or effectiveness of the drug may be determined. Such summaries will be based on the draft Freedom of Information summary submitted under § 516.145, which will be reviewed and, where appropriate, revised by FDA.

(3) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 20.61 of this chapter.

(4) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of the following:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a veterinarian.

(5) A list of all active ingredients and any inactive ingredients previously disclosed to the public as defined in § 20.81 of this chapter.

(6) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 20.61 of this chapter.

(7) All correspondence and written summaries of oral discussions relating to the index file, in accordance with the provisions of part 20 of this chapter.

(f) The following data and information in an index file are not available for public disclosure unless they have been previously disclosed to the public as defined in § 20.81 of this chapter, or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 20.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(g) Subject to the disclosure provisions of this section, the agency shall regard the contents of an index file as confidential information unless specifically notified in writing by the holder of the right to disclose, to reference, or otherwise utilize such information on behalf of another named person.

(h) For purposes of this regulation, safety and effectiveness data include all studies and tests of an animal drug on animals and all studies and tests on the animal drug for identity, stability, purity, potency, and bioavailability.

(i) Safety and effectiveness data and information that have not been previously disclosed to the public are available for public disclosure at the time any of the following events occurs unless extraordinary circumstances are shown:

(1) No work is being or will be undertaken to have the drug indexed in accordance with the request.

(2) A final determination is made that the drug cannot be indexed and all legal appeals have been exhausted.

(3) The drug has been removed from the index and all legal appeals have been exhausted.

(4) A final determination has been made that the animal drug is not a new animal drug.

PART 558— NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 36. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 37. Amend § 558.3 by revising the last sentence of paragraph (b)(2) and revising paragraphs (b)(5), (b)(6), and (b)(7) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(2) * * * The manufacture of a Type A medicated article requires an application approved under § 514.105 of this chapter or an index listing granted under § 516.151 of this chapter.

* * * * *

(5) A Type B or Type C medicated feed manufactured from a drug component (bulk or ''drum-run'' (dried crude fermentation product)) requires an application approved under § 514.105 of this chapter or an index listing granted under § 516.151 of this chapter.

(6) A ''veterinary feed directive (VFD) drug'' is a new animal drug approved under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) or listed in the index under section 572 of the act for use in or on animal feed. Use of a VFD drug must be under the professional supervision of a licensed veterinarian.

(7) A ''veterinary feed directive'' is a written statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a VFD drug in or on an animal feed. This written statement authorizes the client (the owner of the

animal or animals or other caretaker) to obtain and use the VFD drug in or on an animal feed to treat the client's animals only in accordance with the directions for use approved or indexed by the Food and Drug Administration (FDA). A veterinarian may issue a VFD only if a valid veterinarian-client-patient relationship exists, as defined in § 530.3(i) of this chapter.

* * * * *

■ 38. Amend § 558.5 by revising paragraphs (c) and (d) to read as follows:

§ 558.5 Requirements for liquid medicated feed.

* * * * *

(c) *What is required for new animal drugs intended for use in liquid feed*? Any new animal drug intended for use in liquid feed must be approved for such use under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) or index listed under section 572 of the act. Such approvals under section 512 of the act must be:

(1) An original NADA,

(2) A supplemental NADA, or

(3) An abbreviated NADA.

(d) *What are the approval requirements under section 512 of the act for new animal drugs intended for use in liquid feed*? An approval under section 512 of the act for a new animal drug intended for use in liquid feed must contain the following information:

(1) Data, or a reference to data in a master file (MF), that shows the relevant ranges of conditions under which the drug will be chemically stable in liquid feed under field use conditions; and

(2) Data, or a reference to data in an MF, that shows that the drug is physically stable in liquid feed under field conditions; or

(3) Feed labeling with recirculation or agitation directions as follows:

(i) For liquid feeds stored in recirculating tank systems: Recirculate immediately prior to use for not less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(ii) For liquid feeds stored in mechanical, air, or other agitation-type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

* * * * *

■ 39. Amend § 558.6 by revising paragraphs (a)(4)(iv) and (a)(6) to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) * * *

(4) * * *

(iv) Approved or index listed indications for use.

* * * * *

(6) You must issue a VFD only for the approved or indexed conditions and indications for use of the VFD drug.

* * * * *

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

■ 40. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

■ 41. Revise § 589.1000 to read as follows:

§ 589.1000 Gentian violet.

The Food and Drug Administration has determined that gentian violet has not been shown by adequate scientific data to be safe for use in animal feed. Use of gentian violet in animal feed causes the feed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act (the act), in the absence of a regulation providing for its safe use as a food additive under section 409 of the act, unless it is subject to an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter, or unless the substance is intended for use as a new animal drug and is subject to an approved application under section 512 of the act, or an index listing under section 572 of the act, or an effective notice of claimed investigational exemption for a new animal drug under part 511 of this chapter or § 516.125 of this chapter.

Dated: November 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23580 Filed 12–5–07; 8:45 am]

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Federal Register

Thursday,
December 6, 2007

Part V

The President

Proclamation 8209—National Pearl Harbor Remembrance Day, 2007

Federal Register
Vol. 72, No. 234
Thursday, December 6, 2007

Presidential Documents

Title 3—

The President

Proclamation 8209 of December 4, 2007

National Pearl Harbor Remembrance Day, 2007

By the President of the United States of America

A Proclamation

On December 7, 1941, our Nation was viciously attacked at Pearl Harbor, America's Pacific Fleet was battered and broken, and more than 2,400 American lives were lost. On National Pearl Harbor Remembrance Day, America honors those brave individuals who made the ultimate sacrifice in defense of our homeland, and we recognize those veterans who with strength and resolve defended our Nation and advanced the cause of freedom during World War II.

When it mattered most, an entire generation of Americans stepped forward to protect our freedom and to defend liberty. Their devotion to duty and willingness to serve a cause greater than self helped secure our future and our way of life. Liberty prevailed because of the sacrifice of these courageous patriots, and America and her allies preserved a world where democracy could flourish. Our Nation remains forever in the debt of these brave Americans.

From the unprovoked attack at Pearl Harbor grew a steadfast resolve that has made America a defender of freedom around the world, and our mission continues as our men and women in uniform serve at home and in distant lands. Today, as we defend our Nation's founding ideals, we pay special tribute to those who lost their lives at Pearl Harbor, honor our veterans of World War II, and celebrate the liberty that makes America a lasting symbol of hope to the world.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 7, 2007, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn occasion with appropriate ceremonies and activities. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff this December 7 in honor of those who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5991
Filed 12–5–07; 10:07 am]
Billing code 3195–01–P

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2089/P.L. 110–121

To designate the facility of the United States Postal Service located at 701 Loyola Avenue in New Orleans, Louisiana, as the ''Louisiana Armed Services Veterans Post Office''. (Nov. 30, 2007; 121 Stat. 1349)

H.R. 2276/P.L. 110–122

To designate the facility of the United States Postal Service located at 203 North Main Street in Vassar, Michigan, as the ''Corporal Christopher E. Esckelson Post Office Building''. (Nov. 30, 2007; 121 Stat. 1350)

H.R. 3297/P.L. 110–123

To designate the facility of the United States Postal Service located at 950 West Trenton Avenue in Morrisville, Pennsylvania, as the ''Nate DeTample Post Office Building''. (Nov. 30, 2007; 121 Stat. 1351)

H.R. 3307/P.L. 110–124

To designate the facility of the United States Postal Service located at 570 Broadway in Bayonne, New Jersey, as the ''Dennis P. Collins Post Office Building''. (Nov. 30, 2007; 121 Stat. 1352)

H.R. 3308/P.L. 110–125

To designate the facility of the United States Postal Service located at 216 East Main Street in Atwood, Indiana, as the ''Lance Corporal David K. Fribley Post Office''. (Nov. 30, 2007; 121 Stat. 1353)

H.R. 3325/P.L. 110–126

To designate the facility of the United States Postal Service located at 235 Mountain Road in Suffield, Connecticut, as the ''Corporal Stephen R. Bixler Post Office''. (Nov. 30, 2007; 121 Stat. 1354)

H.R. 3382/P.L. 110–127

To designate the facility of the United States Postal Service located at 200 North William Street in Goldsboro, North Carolina, as the ''Philip A. Baddour, Sr. Post Office''. (Nov. 30, 2007; 121 Stat. 1355)

H.R. 3446/P.L. 110–128

To designate the facility of the United States Postal Service located at 202 East Michigan Avenue in Marshall, Michigan, as the ''Michael W. Schragg Post Office Building''. (Nov. 30, 2007; 121 Stat. 1356)

H.R. 3518/P.L. 110–129

To designate the facility of the United States Postal Service located at 1430 South Highway 29 in Cantonment, Florida, as the ''Charles H. Hendrix Post Office Building''. (Nov. 30, 2007; 121 Stat. 1357)

H.R. 3530/P.L. 110–130

To designate the facility of the United States Postal Service located at 1400 Highway 41 North in Inverness, Florida, as the ''Chief Warrant Officer Aaron Weaver Post Office Building''. (Nov. 30, 2007; 121 Stat. 1358)

H.R. 3572/P.L. 110–131

To designate the facility of the United States Postal Service located at 4320 Blue Parkway in Kansas City, Missouri, as the ''Wallace S. Hartsfield Post Office Building''. (Nov. 30, 2007; 121 Stat. 1359)

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